Public Utilities

FORTNIGHTLY

May 9, 1946

OPA AND PUBLIC UTILITY RATES
By Robert A. Nixon

« »

Refinancing Preferred Stock
By Ernest J. Howe

« »

If REA Grows Too Generous
By Ernest Clifford Potts

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

Protect Now with GRINNELL MULSIFYRE

Breakdown in a 16,000 k.v.a. transformer . . . severe internal arcing . . . relief disc blows out . . . oil is violently ejected . . . intense fire envelopes nearby equipment . . . two adjoining transformers let go and add to the fury of the flames. It took a 1½-hour battle to subdue the fire — and $50,000 to replace and repair the damage!

A Grinnel Mulsifyre System now protects the equipment—as well as installations of many other public utility transformer stations.

Wide acceptance of Grinnell Mulsifyre Systems is based on a proved effective principle — in which blazing oil is emulsified with a driving spray of water. The emulsion formed by the water spray is fire-extinguishing – the fire goes out in a few seconds – reignation is prevented.

There is absolutely no conductivity along the discharge of a Mulsifyre projector when spray strikes conductors carrying high voltages. Mulsifyre Systems are permanently installed — are constantly on guard when operated automatically — or may be operated manually.

Recommended by Underwriters' Laboratories for use in extinguishing fires in flammable oils immiscible with water, wherever such oil is a fire hazard — in transformers and other oil-filled electrical equipment.

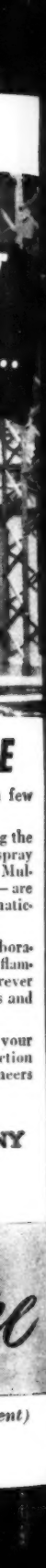
Don't wait for fire to strike! See that your equipment has this 24-hour-a-day protection from now on. Experienced Grinnell engineers will help you plan protection.

GRINNELL COMPANY
INC.

Executive Offices, Providence 1, R. I.
Branch offices in principal cities.

GRINNELL *Mulsifyre*

AUTOMATIC FIRE PROTECTION



Certified by A. G. A. Testing Laboratory. Sizes ¼" up.

Leading Gas Companies Endorse BARBER REGULATORS

IN gas control equipment so vital to safety and fuel economy as a pressure regulator, public service utilities naturally prefer to recommend only the best products on the market. We feel that the wide acceptance accorded Barber Regulators by gas companies everywhere is a true measure of their reliability.

Barber has been building high quality regulators for a great many years. Of thoroughly tested design and construction, they are made with extra substantial bodies, brass operating parts, phosphor bronze springs, and special non-deteriorating diaphragms. Every Barber Regulator is a precision device, responsive to 3/10 pressure drop, and will give continuous, satisfactory service on any type of gas fuel (when ordering regulators please specify type of gas). Barber's 30-year record of reliability protects your reputation, and reduces customer complaints and service calls. Why not standardize on Barber Regulators?

Attractive folders on this Regulator will be furnished free, at your request, for distribution to your trade. Write for catalog and price list on Barber Burner Units for Gas Appliances, Conversion Burners for Furnaces and Boilers, and Regulators.

THE BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland 14, Ohio

BARBER GAS PRESSURE REGULATORS

Barber Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Editor—HENRY C. SPURR
Managing Editor—FRANCIS X. WELCH
Associate Editors—ELLSWORTH NICHOLS, NEIL H. DUFFY, RALPH S. CHILD, WILLIAM B. WHICHARD
Financial Editor—OWEN ELY
Assistant Editors—M. C. MCCARTHY, E. M. PERENICH

Public Utilities Fortnightly

VOLUME XXXVII *May 9, 1946* NUMBER 10

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Utilities Almanack 595
Niagara Falls, USA ..... (*Frontispiece*) 596
OPA and Public Utility Rates ..... *Robert A. Nixon* 597
Refinancing Preferred Stock ..... *Ernest J. Howe* 603
If REA Grows Too Generous ..... *Ernest Clifford Potts* 614
Government Utility Happenings 622
Wire and Wireless Communication 626
Financial News and Comment ..... *Owen Ely* 630
What Others Think 636

Annual Reports of Utilities Trend toward Graphic Style
Local Research Facilities Now Available to South's Utilities
New York Subways Need 10-cent Fare

The March of Events 645
The Latest Utility Rulings 653
Public Utilities Reports 659
Titles and Index 660

Advertising Section

Pages with the Editors 6
In This Issue 10
Remarkable Remarks 12
Industrial Progress 25
Index to Advertisers 36

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office .....CANDLER BUILDING, BALTIMORE 2, MD.
Executive, Editorial, and Advertising Offices.....MUNSEY BUILDING, WASHINGTON 4, D. C.
(Address all communications concerning the FORTNIGHTLY *to Munsey Building, Washington 4, D. C.)*

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1946 by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

SOME weeks ago, President Truman told Congress he wanted to have the OPA extended. But judging by recent action of the House, the Congressmen must have thought he merely wanted it stretched—by the neck. At this writing, the outlook for OPA is gloomy, and while the Senate is expected to come to the rescue to keep the patient from expiring altogether, OPA probably will never be the same.

LOOKING back over the war-torn years, we can say with some degree of satisfaction that OPA was one major branch of the Federal government with which the utilities did not have too much trouble, comparatively speaking. This, in itself, is a little unusual—considering utility problems with other government agencies in recent years. But the interesting thing about it is that this relatively untroubled relationship worked both ways. OPA, as already indicated, never gave the utilities too much trouble; and, contrariwise, the utilities were among the minor headaches of OPA. And that is, certainly, not to say that OPA didn't have plenty of headaches.

ROBERT A. NIXON

ERNEST J. HOWE

THERE were a number of reasons for this situation. First of all, the trend of utility rates—especially gas and electric utility rates—has been *downward* rather than upward. And since OPA was dedicated to the proposition that rates and prices, generally, should not *increase*, the principal area for collision was eliminated.

* * * *

AGAIN, there is the limited type of jurisdiction which OPA has over utility rates, as defined by the U. S. Supreme Court in the Washington Gas Light Company Case. This decision held that OPA's interest in utility rate cases is confined by statute to timely notice plus opportunity

to be heard in regulatory and court proceedings involving rate changes.

BUT even this much does not tell the whole story. It would be unfair to the hard-working personnel of the OPA Transportation and Public Utilities Division to suggest that it did little but stand by and let nature take its course, simply because of the very nature of economic trends in the utility rate field. Utility executives all over the country do not have to be reminded that the OPA Public Utilities Division labored ceaselessly to make sure that the utility rates were "holding the line." And inasmuch as it is now generally admitted that utility rates have held the line better than almost any other commodity price or service subject to OPA jurisdiction, a fair measure of credit must be given to OPA's duly authorized sentinels on duty in this particular theater of economic stabilization.

THE opening article in this issue is written by an author who has served on both sides of this particular field of utility rate regulation. As chief of the OPA Transportation and Public Utilities Division, ROBERT A. NIXON was immediately responsible to the OPA Administrator for the administration of OPA's statutory powers over utility rates, such as they are. Before taking this post in 1942, MR. NIXON had served for a number of years as a member of the Wisconsin Public Service Commission. He is a native of Viroqua, Wisconsin, and a law graduate of George Washington University. He served three successive terms (1928 to 1933) in the Wisconsin legislature and was appointed to the Wisconsin commission in 1937.

ERNEST CLIFFORD POTTS

* * * *

A NEW contributor to this magazine is ERNEST J. HOWE, vice president of the Rochester Gas and Electric Corporation of Rochester, New York, whose article on refinancing preferred stock begins on page 603.

BORN in Colorado in 1900, MR. HOWE was educated at the University of Denver (AB, '21) and Columbia University School of Business (MS, '23). After some years in the investment banking business he entered the employ of the trustees of the Associated Gas & Electric Corporation in 1940. He became a director of the Rochester Gas and Electric Corporation at the same time and was made vice president in 1944.

* * * *

ERNEST CLIFFORD POTTS, whose article on REA begins on page 614, is a "veteran newspaper man" of the Pacific Northwest coast in the best sense of that much abused term. Born and educated in Nebraska (AB, Doane College), POTTS started on his journalistic career with his own county seat weekly. But the "Dust Bowl" misfortunes in the years before they were recognized as a national problem cleaned out his rural subscribers and his business along with them. For eleven years he held successive reporting and editorial posts on the *Boise* (Idaho) *Statesman.* For three years he was associate editor of the *Seattle* (Washington) *Business Chronicle,* now defunct. Since 1932, he has been editor of the *Oregon Voter* and the author of many articles about business problems in the Pacific Northwest.

THE next number of this magazine will be out May 23rd.

The Editors

In This Issue

In Feature Articles

OPA and public utility rates, 597.

Problems of administration, 598.

OPA standards, 599.

OPA standards in practice, 600.

Effect of rate increases, 602.

Refinancing preferred stock, 603.

Charter amendment, 604.

Solicitation of proxies, 605.

Prerequisites for obtaining favorable stockholder vote, 607.

Market atmosphere, 609.

Advantages in preferred stock refinancing, 610.

Reclassification of corporation, 611.

If REA grows too generous, 614.

Original objectives of REA program, 615.

REA coöperative failures, 616.

Appeal to which REA coöperative members responded in voting themselves out of business, 618.

REA's postwar program, 619.

Government utility happenings, 622.

Wire and wireless communication, 626.

In Financial News

Remarkable gains in 1946 utility earnings reports, 630.

Utility analyses by Wall Street houses, 630.

Holding company preferred stocks, 633.

New North American plan, 633.

Holding company preferred stocks, 634.

Utility financing (chart), 635.

In What Others Think

Annual reports of utilities trend toward graphic style, 636.

Local research facilities now available to South's utilities, 643.

New York subways need 10-cent fare, 644.

In The March of Events

Atomic energy bill reported, 645.

FPC authorizes extensions, 645.

Westinghouse reports, 645.

Plan filed with SEC, 645.

Legal fees allowed, 646.

New mixed gas studied, 646.

Union bars Communists, 646.

Awards announced, 647.

Tidelands measure approved, 647.

News throughout the states, 647.

In The Latest Utility Rulings

Original cost less depreciation plus working capital adopted as rate base, 653.

Coke plant acquisition by gas company found consistent with public interest, 654.

Working capital and expenses of wholesale gas company involved in rate case, 654.

Joint consideration of separate applications upheld by Supreme Court, 655.

Increase in demurrage charge upheld without OPA approval, 656.

Commission refuses to pass on validity of law, 656.

Miscellaneous rulings, 657.

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257-320, from 62 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

GEORGE L. BLISS
President, Railroad Federal Savings Association.

"In no field of business is it possible for government and private capital to compete."

ROBERT A. SEIDEL
Vice president and comptroller, W. T. Grant Company.

" . . . production will stop inflation only if we can keep OPA from stopping production."

BERNARD M. BARUCH
Financier.

"Today we face a great political and philosophical issue —statism *versus* individualism."

LEO WOLMAN
Professor, Columbia University.

"The government does everything possible to make free collective bargaining unworkable and unprofitable."

HUGH H. McGEE
Vice president, Bankers Trust Company.

"I suggest that the banking business does not belong in the credit agencies and thereby on the backs of taxpayers."

HENRY A. WALLACE
Secretary of Agriculture.

" . . . it is national futility when the people elect a progressive President and a reactionary Congress, or vice versa."

ROBERT R. WASON
President, National Association of Manufacturers.

"When the government buys its power with prodigal gifts in exchange for controls at the expense of the thrifty, it endangers every citizen of us."

OWEN BREWSTER
U. S. Senator from Maine.

"Whether the system of private enterprise will survive will be determined in the next ten years, during which businessmen can play an important part."

JOHN C. KNOX
Judge, U. S. District Court.

"Let us face the fact that if some of our leaders of labor be not curbed, they may, conceivably, wreck industry, destroy the capitalistic system, and change our form of government."

EMIL SCHRAM
President, New York Stock Exchange.

"There is no way to quick riches in the stock market for the average investor, despite the highly publicized exceptions. The element of risk can be minimized but not eliminated."

EDITORIAL STATEMENT
The New York Times.

"Our Federal labor law requires basic revision. But that revision ought to be a comprehensive one based on a careful, impartial study of the problem."

LELAND OLDS
Chairman, Federal Power Commission.

"There is no economic reason why communities throughout the country should not eventually enjoy rates comparable with those in the Tennessee valley."

CHARLES E. WILSON
President, General Electric Company.

"On the price question we do not think that government agencies will ultimately be a controlling factor, because even a government agency cannot change the laws of arithmetic."

HATTON W. SUMNERS
U. S. Representative from Texas.

"The total of concentrated power is utterly beyond the capacity of the machinery of democratic government, and we must either lessen the load of governmental control or change its machinery and its distinctive characteristics."

JAMES E. MCCARTHY
Dean, College of Commerce, Notre Dame University.

"We must tell our people that our system of business enterprise will function, as it is eager to function, and bring prosperity, only if an environment favorable to business competition for profit is recreated and maintained."

R. B. CORBETT
Secretary-treasurer, American Farm Bureau Federation.

"Farmers believe that labor troubles will not disappear until it is recognized that production is the basis of all wealth, and, regardless of the political philosophy that prevails, we cannot have a high standard of living without full production."

ARTHUR KROCK
Head, Washington bureau, The New York Times.

"Politics—the worst kind—is founded in the experience of politicians, who in war and peace have grossly deceived the American people, that we are a spoiled people, spoiled by nature, spoiled by destiny, rather believing we can always have and eat our cake."

VIRGIL JORDAN
President, National Industrial Conference Board.

"As a strictly economic issue the fight against inflation is a phony, a political fraud, a device to justify further expansion or to prevent deflation in government—and in that sense a substitute for the war as an emergency excusing continuation and extension of state authority and activity."

EDITORIAL STATEMENT
The Wall Street Journal.

"The claim for a managed economy is that it averts violent fluctuations and that it keeps affairs running along on an even keel. The real fact, which we are now seeing, is that it subjects all of us to the guesses of a few men and that the only thing that it can be depended upon to produce, and unfailingly, is emergencies."

TRUCK SERVICE by TRUCK SPECIALISTS for a Prosperous America

MOST OF AMERICA'S TRUCKS have years of hard, punishing service behind them. Half the trucks on the road today are more than eight years old. *And let's keep this in mind*—most of these old trucks *still* have a tremendous part to play in building production for a prosperous America.

The service these trucks can render to industry and commerce depends entirely upon the kind of service they are given.

Truck service is the biggest factor in truck operation—and in operating cost—no matter what work the trucks are doing or who they're working for.

Truck service now is a bigger job than ever.

International Truck Service — the largest company-owned truck service organization—and thousands of International Dealers everywhere are at your service, no matter what make or model your truck may be.

Drive your truck in at the sign of the INTERNATIONAL Triple Diamond for truck service by truck specialists. No lost time, no lost motion. No tinkering, no guesswork. Swift. Sure. Economical.

Motor Truck Division
INTERNATIONAL HARVESTER COMPANY
180 N. Michigan Ave. Chicago 1, Illinois

Listen to "Harvest of Stars" Every Sunday, 2 p.m. E.S.T. / NBC Network

INTERNATIONAL INTERNATIONAL **TRUCKS**

TRUCK OWNERS SAY:

"There is no substitute for *Job-Rated* economy"

You—like many other public utility companies—*know* that when trucks *fit your job*, they perform more efficiently, operate more economically, and last longer. . . . You know that you get better and more economical performance when the transmission, clutch, axles, and other units are of exactly the right size for the truck's job—you get *better* hauling at *lower* cost. . . . Dodge *Job-Rated* trucks fit your needs in many ways. They're engineered specifically for heavy-duty, frequent stop service. If you struggled through the war *without* the economy and dependability of trucks that fit your job—talk to Dodge owners, then to a Dodge dealer. NOW is a good time to switch to Dodge *Job-Rated* trucks.

DODGE DIVISION, CHRYSLER CORPORATION

DODGE *Job-Rated* TRUCKS

FIT THE JOB . . . LAST LONGER

LISTEN TO THE MUSIC OF ANDRE KOSTELANETZ, WITH FAMOUS GUEST STARS, THURSDAYS, C.B.S., 9 P.M., E.T.

Utilities Almanack

May

9	T[h]	¶ *American Public Power Association starts 2-day meeting, Memphis, Tenn., 1946.* ¶ *Indiana Gas Association begins convention, French Lick, Ind., 1946.*
10	F	¶ *American Water Works Association, Pacific Northwest Section, will hold meeting, Gearhart, Or., May 23, 24, 1946.*
11	S[a]	¶ *New Jersey Utilities Association will hold spring meeting, Absecon, N. J., May 24, 25, 1946.*
12	S	¶ *Great Lakes Power Club will hold spring meeting, Chicago, Ill., May 24, 1946.*
13	M	¶ *Pennsylvania Electric Association, Engineering Section, will hold meeting, Harrisburg, Pa., May 28, 29, 1946.*
14	T[u]	¶ *Wisconsin Telephone Association begins convention, Madison, Wis., 1946.*
15	W	¶ *Indiana Electric Association, Young Men's Utility Conference, ends, Indianapolis, Ind., 1946.*
16	T[h]	¶ *Edison Electric Institute will hold annual convention, New York, N. Y., June 3–5, 1946.*
17	F	¶ *American Gas Association Joint Production and Chemical Committee will hold conference, New York, N. Y., June 3–5, 1946.*
18	S[a]	¶ *Pennsylvania Telephone Association will hold convention, Pittsburgh, Pa., June 6, 7, 1946.*
19	S	¶ *American Gas Association Midwest Personnel Conference will be held Kansas City, Mo., June 6, 1946.*
20	M	¶ *Gas Appliance Manufacturers Association will hold annual meeting, Chicago, Ill., June 11, 12, 1946.*
21	T[u]	¶ *Pennsylvania Gas Association begins meeting, Wernersville, Pa., 1946.*
22	W	¶ *Southeastern Electric Exchange, Power Sales Conference, begins, Asheville, N. C., 1946.* ¶ *New York Telephone Association begins convention, Syracuse, N. Y., 1946.*

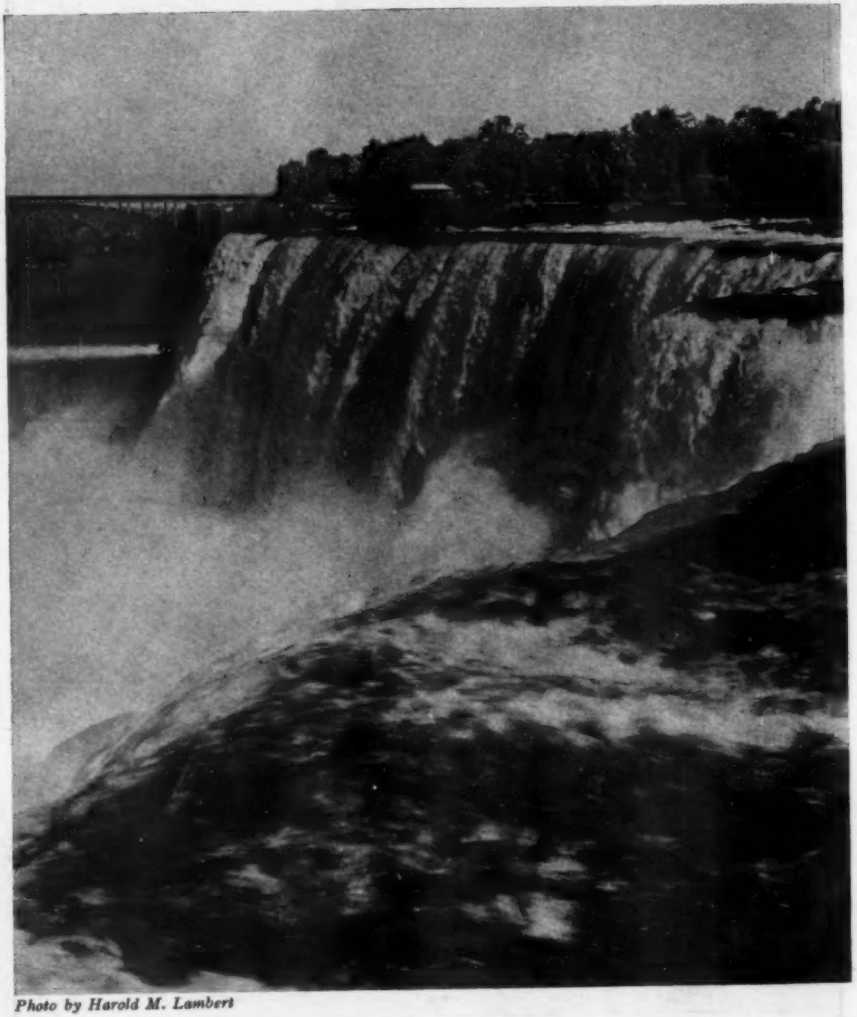


Photo by Harold M. Lambert

Niagara Falls, USA

Public Utilities
FORTNIGHTLY

VOL. XXXVII, No. 10 MAY 9, 1946

OPA and Public Utility Rates

Utility rates have "held the line" against price inflation better than almost any other commodity or service price subject to regulation. This article is an authoritative statement of the OPA angle of the subject by the official in charge of OPA surveyance of utility rates and rate changes.

BY ROBERT A. NIXON
DIRECTOR, TRANSPORTATION AND PUBLIC UTILITES DIVISION, OFFICE OF PRICE ADMINISTRATION

I. *Statutory Authority*

ALTHOUGH, in the discharge of its functions under the Emergency Price Control Act, the Office of Price Administration necessarily has a broad interest in all elements in the cost of living, its activities in public utility rate matters spring primarily from the Stabilization Act of 1942 and executive orders and directives issued thereunder.

The Price Control Act[1] exempted the rates of public utilities from regulation by the Price Administrator, but when the Congress passed the Stabilization law late in 1942 it included a proviso designed to enable the President to take steps to assure stabilization of prices of public utility services. The pertinent provision reads:

> Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention of such agency before the Federal, state, or municipal authority having jurisdiction to consider such increases.[2]

Acting under the powers of the Sta-

[1] Section 302(c), Emergency Price Control Act, approved January 30, 1942, 50 USCA App § 901.

[2] Section 1, Stabilization Act, approved October 2, 1942, 50 USCA App § 961.

bilization Act, the President issued an executive order[3] creating the Office of Economic Stabilization and ordered that "the director (of the Office of Economic Stabilization) shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid act of October 2, 1942."

The Director of Economic Stabilization thereupon issued a directive[4] designating

> the Price Administrator of the Office of Price Administration, as the representative of the Director of Economic Stabilization, to receive notices of increases in common carrier or other public utility rates and charges . . .

The foregoing constitutes the chain of authority under which OPA operates in public utility rate matters. It should be noted in passing, however, that beginning in September, 1945, certain changes were made relating to the Office of Economic Stabilization. Since this office, after having been abolished, has now been recreated with all of its former power and authority,[5] the details of the interim arrangements need not be included in this description of the source and nature of our authority.

The foregoing summarizes the basis upon which OPA has received approximately 2,500 notices of proposed general rate increases in the field of public utilities.[6]

[3] Executive Order 9250, 7 FR 7871.

[4] Directive No. 1, 7 FR 8758.

[5] Executive Order 9699, 11 FR 1929 (February 21, 1946).

[6] This figure does not include notices of common carrier rate increases except urban bus and streetcar companies, nor does it include increases in charges for stockyard services subject to control by the Packers and Stock Yards Administration.

II. *Legislative Intent*

THE legislative history of the notice and intervention provisions of the Stabilization Act indicates that Congress had in mind preserving, so far as possible, existing regulatory processes developed over the years by Federal, state, and municipal authorities, and at the same time making provision for the presentation of the government's policy regarding the need for avoiding increases in prices during the period of potential inflation to such authorities for their consideration in general rate increase cases.

In the early days of OPA, it was felt that the Congress intended to exempt from price control only the so-called "traditional" public utility services. This question was tested in litigation arising in the state of California where the state regulates the rates of public warehouses. The Supreme Court in the Davies Case[7] held that where a business enterprise was appropriately classified as a public utility service and the rates and charges therefor were actually subjected to regulation the service was exempt from price control, but became subject to the requirements of the Stabilization Act.

III. *Problems of Administration*

THE problems arising out of the administration of the notice and consent provisions of the Stabilization Act were numerous and complex. In order to obtain uniform procedure and to advise the public utilities and common carriers of their responsibilities under the act, OPA issued a procedural regulation[8] defining the term "general

[7] Davies Warehouse Co. *v.* Bowles (1944) 321 US 144, 52 PUR(NS) 65.

[8] Procedural Regulation 11.

increase in rates and charges" and outlining the information to be submitted as a part of the notice to enable the administrator to determine whether or not the proposed rate increase conflicted with the government's stabilization policies. This regulation was drafted after extensive consultations with common carriers and public utilities. It has been in effect for more than three years and has proved satisfactory, with but slight amendment.

However, the issuance of this regulation did not by any means solve all of our administrative difficulties. The character and content of state regulatory laws vary in accordance with the number of states and territories and the whole vast range of public and semi-public services. This variety of statutory treatment has made standardized action on the part of OPA impossible. To illustrate: In the field of taxicab rates some states regulate rates through their regulatory commissions.

In a number of jurisdictions, municipalities regulate such rates and in many cities there is no rate regulation at all. In one state cotton ginning is classified and regulated as a public utility service, but throughout the balance of the cotton belt the charges for cotton ginning are not subject to any state or local regulation. Some states regulate the rates and charges of certain types of warehousing and in other states there is partial or no regulation. This is likewise true of electric, gas, telephone, and water utility rate regulation. Some state commissions regulate the rates of both municipal and private utilities. Others regulate only the private utilities, and still others have special municipal authorities set up by charter which regulate rates of municipal utilities.

In the field of common carriers, which are likewise generally subject to the provisions of the Stabilization Act relating to public utilities, many knotty questions also arose. Discussion of these questions is here omitted, though it should be noted in passing that a large area of transportation and accessorial services, including contract carrier operations, is subject to direct OPA maximum rate control. In those states where regulatory agencies are given authority over the minimum rates of contract carriers, the possibilities for conflict with OPA were thus very great. Yet, through coöperative effort these conflicts were generally resolved to the satisfaction of the state regulatory agencies and in the interest of the stabilization program.

IV. *OPA Standards*

To maintain a fairly uniform policy in the teeth of these complex ques-

¶ "In *the field of taxicab rates some states regulate rates through their regulatory commissions. In a number of jurisdictions, municipalities regulate such rates and in many cities there is no rate regulation at all. In one state cotton ginning is classified and regulated as a public utility service, but throughout the balance of the cotton belt the charges for cotton ginning are not subject to any state or local regulation.*"

tions without incurring the risk of a flood of lawsuits was a most difficult task. We adopted certain general guides which may be summarized as follows:

1. A business enterprise appropriately classified and regulated as a public utility by Federal, state, or local authorities was regarded as exempt from price control and subject to the provisions of Procedural Regulation 11.

2. Where the enterprise was traditionally regarded as a public utility but not regulated by public authority, while OPA did not exercise ordinary price control over its charges, its rates were considered to be subject to the Emergency Price Control Act of 1942, but in order to raise the prices, or rates, the enterprise need comply only with the 30-day notice provisions of PR 11.

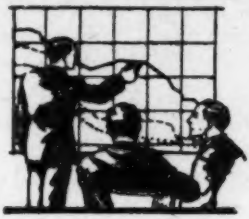
3. A municipally owned and operated public service enterprise whose rates and charges were subject to and actually controlled by a municipal board or council was regarded as a public utility exempt from price control but subject to the provisions of PR 11.

Having adopted this policy with respect to the status of public utility enterprises, the next step involved the establishment of guides for use in determining whether or not the OPA should intervene and oppose a projected rate increase. The test called for a determination is (a) the increase necessary to insure the continuation of a service essential to the war effort or the civilian economy, or (b) to correct a gross inequity? OPA accepted, of course, the proposition that all public utility service was essential to the war effort and the civilian economy. On the question of continuing service its position was that the burden was on the applicant for higher rates to show the existence of sufficient financial hardship under present rates to endanger its ability to continue rendering adequate service. In applying this principle, OPA generally took the position that any company which was subjected to the payment of substantial excess profits taxes was not suffering financial hardship which would entitle it to increased rates. It also took the general position that rate increases sought for the purpose of increasing the amount of return to investors over the normal peacetime returns were not justified under the economic stabilization policy of the government. Of course, rate bases,[9] rate of return, depreciation, and all of the usual issues in rate proceedings were present and given consideration.

V. *OPA Standards in Practice*

In applying these tests it developed that many notices involved cases in which it appeared that the utilities needed increased rates even under wartime conditions. A very large number of notices, especially from small telephone companies, indicated the need for additional revenues. They had a record of low labor and material costs, low returns, and low rates. Their reserves, if any, were insufficient to carry such companies over the period of increasing operating costs during the war. Also, a large category of notices covered cases where the increases proposed were nominal in amount or involved establishment of new rate schedules including both increases and reductions. With few exceptions, where these conditions were found to exist, OPA did not intervene. Where, however, it was found that the increases

[9] It was also urged that reproduction cost estimates as evidence of fair value were inflationary, since wartime construction costs greatly exceeded normal, peacetime costs.



Regulation of Rates

"Some state commissions regulate the rates of both municipal and private utilities. Others regulate only the private utilities, and still others have special municipal authorities set up by charter which regulate rates of municipal utilities."

were not needed, or were greater than seemed necessary, OPA intervened.

In many cases representatives of the utilities came to confer on proposed rate changes before actually serving notices of the increases. Usually, after a round-table discussion either the increase was abandoned or a basis was found for rate adjustment satisfactory to both OPA and the applicant. Since these conferences obviated the necessity for intervention, this useful field of activity is not reflected in the statistics as to OPA interventions which are given below. Of course, in any instance where a rate adjustment seemed appropriate, it was always subject to the approval of the appropriate regulatory body having jurisdiction.

The OPA intervened in 38 telephone cases which involved proposed increases of more than $3,000,000 in the aggregate. Six of these remain to be decided by regulatory agencies. Increases of slightly over $600,000 were granted. Decreases of $160,000 were ordered and, except for the pending cases involving about $262,000, the balance were denied by the regulatory agencies or withdrawn by the companies. In the field of local transportation OPA intervened in 29 cases involving increases of approximately $21,000,000. Eight of these are pending; six were withdrawn, and increases were granted of about $6,700,000. Five steam utility cases involving $548,000 were opposed by OPA. Increases aggregating $50,000 were granted. One case involving $72,000 was withdrawn and another case involving $400,000 was denied but is now on appeal to the state commission. OPA intervened in five water utility cases involving increases of $270,000 annually. The increases granted amounted to $19,000; those withdrawn or denied, $165,000; and one case involving $37,000 is pending. OPA intervened in eight electric cases, three of which involved increases of $2,755,000. The increases denied amounted to $1,000,000, and those withdrawn to $1,755,000. In the field of gas utilities, OPA intervened in 39 cases. The amount of increases re-

quested was $11,000,000, of which $767,000 was granted, $1,981,000 withdrawn or denied. Fourteen cases are still pending.

WHILE the statistics indicate that OPA intervened in a relatively small number of cases compared to the total number of notices received, and also that the total dollar amount of the proposed increases represents a small percentage of the total revenues of the utility industry, the fact remains that the effect of these increases would have been borne by small segments of the total population and therefore represented much higher costs in terms of the customers' bill than would have been true if the increases had been spread throughout the economy. Moreover, the size of price increases in an economy subjected to heavy inflationary pressures has long since been ruled to be immaterial.[10]

In addition to intervention in rate increase cases OPA has in a few instances intervened in (but has not initiated) proceedings before regulatory agencies involving utility rate reductions. OPA intervened in two electric rate reduction matters, one of which resulted in a decrease of $2,000,000 annually, and the other, which is pending, involved $19,450,000. The basis for this action is twofold. Primarily it is that part of the President's hold-the-line order calling attention of regulatory agencies to the importance of the stabilization program so that rate increases will be disapproved and rate reductions effected consistent with the act of October 2, 1942, and other applicable state or municipal law,[11] and, secondly, the fact that such cases involved important issues which would be of equal significance as precedents in rate increase cases, as, for example, the treatment of excess profits taxes.

VI. *Conclusion*

IN conclusion, it is clear that in general the nation came through the war without an increase in the over-all cost of utility services. This is due to many factors. Many utilities were enjoying extraordinary earnings as a result of greatly increased sales. Others adopted a policy early in the war of not seeking rate increases so long as the Federal policy to prevent inflation continued. Also, many state regulatory authorities looked askance at proposals to increase rates during wartime. It is also possible that the prospect of encountering opposition from a Federal agency may have had a tendency to discourage requests for rate advances. Looking to the future, the inevitable drop in sales following the termination of the war, with continuing increasing costs of labor and materials, may result in increased activity on the part of some utilities in seeking higher rates.

[10] Lincoln Savings Bank of Brooklyn *v.* Brown, Price Administrator (1943) 137 F2d 228. "A substantial price increase of any commodity will not, in itself, add appreciably to the living costs of the general public. Its weight is milligramic. But the combined effect of millions of these minute quanta, which singly would not shake the scales, could be catastrophic."

[11] Section 4, Executive Order 9328, 8 FR 4681.

Refinancing Preferred Stock

Reduction in the dividend rate of the Rochester Gas and Electric Corporation preferred issues accomplished by a specialized use of the reclassification process, plainly much simpler than financing in the traditional pattern of redemption and reissuance. Detailed description of the reclassification procedure. Its result and advantages.

By ERNEST J. HOWE
VICE PRESIDENT, ROCHESTER GAS AND ELECTRIC CORPORATION

THE outstanding financial phenomenon of the last decade has been a relatively steady and very prolonged decline in interest rates. As a result, there has been an unusually large volume of refinancing. This has characterized public utility as well as industrial financial operations. Public utility financing during this period has been also subject to powerful regulatory influence. This, of course, is the Public Utility Holding Company Act of 1935, as administered by the Securities and Exchange Commission, blended with and superimposed upon increasingly stringent requirements of the public utility commissions of the several states. Under the effect of this dual regulation and the Securities Act of 1933, public utility financing has become more and more standardized and the borrower's area of judgment has been correspondingly narrowed. This standardization, however, should not be mistaken for simplification. The quantity of documents required in the ordinary type of financing or refinancing program has become nothing short of enormous. It is a reasonable question, therefore, whether the desirable results of this supervision could be achieved with more limited documentation and reduced expense.

With respect to bond financing, the answer so far is definitely NO, until present requirements are simplified. With respect to the special field of refinancing of preferred stock, however, important simplification is now possible within the framework of present laws and regulations, in cases in which state corporation statutes permit. This was recently demonstrated by Rochester Gas and Electric Corporation in a proceeding whereby the dividend rate on $12,000,000 par value of preferred was reduced from 6 per cent to 4 per cent per annum and the dividend rate

on $4,000,000 par value of 5 per cent preferred was simultaneously reduced from 5 per cent to 4 per cent per annum without registration under the Securities Act of 1933. This was accomplished in a transaction specifically subject to the jurisdiction of the New York Public Service Commission and of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935.

THE result was accomplished by a specialized use of the process known as reclassification; in other words, by charter amendment. By the use of this technique, a simple vote of stockholders (preceded and followed by appropriate regulatory authorization) effected the necessary changes in the preferred stock provisions. Although the operation was without precedent for a public utility company, subject to the Public Utility Holding Company Act of 1935, there have been several examples of this type of preferred stock refinancing, in the industrial field, in recent years.

Pursuant to a proxy statement authorized by the Securities and Exchange Commission, but without a registration statement under the Securities Act of 1933, on December 10, 1943, the preferred and common stockholders of Endicott Johnson Corporation, a New York corporation, voted to reduce the dividend on that corporation's $7,306,000 par value of preferred from 5 per cent to 4 per cent per annum. On September 19, 1944, under similar circumstances, the preferred and common stockholders of McLellan Stores Company, a Delaware corporation, voted to reduce the dividend from 6 per cent to 5 per cent per annum on the $2,984,000 par value of preferred stock of that company. Stockholders of Interchemical Corporation, an Ohio corporation, reduced the dividend rate from 6 per cent to 4½ per cent per annum on their $7,811,900 par value of preferred stock by voting in favor of the reduction and using the same mechanics, on October 27, 1944. A still larger operation of this kind was accomplished on February 28, 1945, by Gimbel Brothers, Inc., a New York corporation. In that case, $18,317,950 of preferred stock was reduced from a dividend of $6 to $4.50 per share. All of these transactions were consummated pursuant to the regular proxy rules of the Securities and Exchange Commission, but no registration statement under the Securities Act of 1933 was required.

THE procedure used by Rochester Gas and Electric Corporation to effect a reduction in the dividend on its preferred stock, while more complicated than that which must be followed in the case of industrial corporations, was still much simpler than financing in the traditional pattern of redemption and reissuance. The reclassification program involved seven principal steps. The first of these was to file application with the New York Public Service Commission for general approval of the program. In spite of the fact that the approval of the public service commission was not to be received until after the stockholders' meeting, it was considered appropriate that this body be notified officially of the corporation's program in detail as soon as it was formulated. The second step, which was taken on the same day on which the application to the New

York Public Service Commission was filed, was the filing of an application-declaration (Form U-1) with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 for authority to solicit proxies. The U-1 set forth the transaction in the same detail usually required under this form, but the voluminous requirements of registration under the Securities Act of 1933 did not have to be met.

THE next step undertaken, when authorization to do so had been received from the Securities and Exchange Commission, was, of course, the solicitation of proxies. This occupied a period of about thirty days and involved personal contact with about 6,000 stockholders and, on many occasions, discussion with their financial advisers. Both the statute of the state of New York and the charter of the corporation required that a favorable vote of at least two-thirds of the outstanding stock of each class be obtained in order to accomplish the reclassification. This made it necessary to obtain a response from a high proportion of stockholders. The fourth step was the stockholders' meeting and voting on the proposal. The result of the vote was that 73.6 per cent of the outstanding preferred stock voted in favor of the reclassification and 6.5 per cent was recorded as opposed. The entire common stock, owned by NY PA NJ Utilities Company, voted in favor of the program. Immediately following the meeting, the certificate of reclassification was executed by the proper officers of the corporation and forwarded to the New York Public Service Commission. The fifth step in the program was the approval of the reclassification plan by the New York Public Service Commission, which included its endorsement of approval and consent on the certificate of reclassification. The sixth step was to file with the Securities and Exchange Commission a copy of the order of the New York Public Service Commission, approving the reclassification, and to obtain from the Securities and Exchange Commission an order permitting the corporation's application-declaration to become effective. The seventh and final step was to file with the department of state of the state of New York the certificate of reclassification, duly endorsed by the New York Public Service Commission. From the stockholder's point of view, this was the final definitive step for it was the filing of this certificate with the

¶ "IN *determining an appropriate price basis for a reclassification program, not only the call price before reclassification, but also the call price after reclassification must be considered. . . . The reclassification procedure, however, makes possible an increase in the call price on the reclassified stock. Whether or not an increase should be made is a business decision which must be carefully considered in connection with the necessary determination that the price relationship in general is sufficiently favorable to obtain stockholder acceptance and regulatory authorization.*"

department of state and the acceptance of it by that department which made effective the modifications in the charter. The principal one of these was, of course, the reduction of the dividend rates on the preferred stock.

COUPLED with the reclassification plan was a preferred stock retirement program. It was the corporation's desire to retire $4,000,000 par value out of the $16,000,000 par value of preferred stock outstanding at the outset. This portion of the program was shaped to meet the appraisal section of the New York statute and included, as well, a tender program which gave any stockholder, who preferred to receive the call price of $105 per share and accrued dividends, an opportunity to do so for fifteen days following the date upon which the reclassification became effective.

The corporation was anxious to avoid the possible ill-feeling and expense which might grow out of appraisal proceedings and, therefore, offered to pay any stockholders, who might demand appraisal, the call price of the preferred stock plus accrued dividends to the date on which the reclassification took place. This seems to have been a wise provision. Although 519 stockholders, owning a total of 10,397 shares of preferred stock, voted against the plan and were eligible to seek appraisal upon proper demand, as a matter of fact, only 41 stockholders, owning a total of 1,705 shares, demanded payment for their stock rather than to retain it on the basis of the reduced dividend. In all cases, these stockholders accepted the corporation's offer of the call price plus accrued dividends and did not assert their rights by seeking to have court appraisal of their holdings.

THE tender procedure, which provided an opportunity to receive the call price plus accrued dividends for fifteen days following the effective date of reclassification, was designed to meet the requirements of stockholders who recognized the fundamental fairness of the plan and were willing to vote for it, but who, for personal reasons of their own, wanted to liquidate their holdings. By the end of the tender period, 8,775 additional shares of preferred stock were acquired by tenders from stockholders. Thus, through surrenders of stock in lieu of appraisal and stock tendered voluntarily by stockholders, the corporation acquired a total of 10,480 shares. This was 29,520 shares less than the 40,000 shares of stock which the corporation desired to retire.

On completion of the tender program, therefore, 29,520 shares of stock were called for redemption and paid off at the call price plus accrued dividends. This was the final step in the retirement program, except the formality of filing a certificate of reduction of capital with the secretary of state of the state of New York, after endorsement of approval and consent thereon by the New York Public Service Commission. The filing of this certificate of reduction of capital has now been completed.

ONE of the fundamental facts which affected the corporation's decision to reclassify the stock, and also the amount of work involved in proxy solicitation, was that the corporation had a relatively large number of hold-

Advantages in Preferred Stock Refinancing

"THE advantages to the corporation in preferred stock refinancing through reclassification are several and important. One of the most obvious advantages of this method of refinancing is in preserving small stockholdings within the franchise territory of the corporation and within the state in which the corporation operates."

ers of small amounts of preferred stock, an appreciable number of whom were resident within the corporation's franchise territory. Although the corporation had preferred stockholders of record in 45 states, approximately 37½ per cent of the total number were residents of the Rochester territory and approximately 60 per cent were residents of the state of New York. In terms of outstanding preferred stock, 27 per cent of the stock was held within the franchise territory of the corporation, while 52½ per cent was held by residents of the state of New York. The large number of small stockholdings is evidenced by an analysis of the size of the stock certificates outstanding. Sixty per cent of the total number of certificates outstanding were in amounts from 1 to 10 shares; 82 per cent were for amounts of 25 shares or less; and 93 per cent were for amounts of 50 shares or less. In terms of number of shares owned, however, the distribution was quite different. The number of shares represented in 1- to 10-share certificates aggregated only about 20 per cent of the total outstanding preferred shares; certificates for 25 shares or less aggregated 42 per cent; while certificates for 50 shares or less accounted for approximately two-thirds of the total stock.

The percentages of the total outstanding preferred stock which were registered in the names of various types of stockholders also throw some light on the character of the solicitation required. Holdings of individuals were 71 per cent; insurance companies, 11.8 per cent; colleges and universities, 2.7 per cent; other institutions, 4.2 per cent; brokers' names, 1.4 per cent; and bank nominees, 8.9 per cent.

AT first blush it may seem unreasonable to ask a preferred stockholder to vote for a reduction in his dividend at a time when the corporation involved is in thoroughly sound financial condition and amply able to pay the

higher rate. In fact, this is such a natural thought that some care is required in the presentation of the proposal to preferred stockholders. The alternative with which the stockholder is faced must be clearly stated. This is not an alternative between 6 per cent and 4 per cent, for instance, but an alternative between a reduction of dividend by reclassification and a refinancing by means of redemption of the entire preferred stock, accompanied by a public issue of new securities in whose ownership most stockholders — especially small ones—are not likely to have an opportunity to share. This is another way of stating that, as a practical matter, the stockholder must realize that he is facing the alternative of finding another investment or accepting the reduced rate. There is also a tax angle which may be pointed out. If the stockholder accepts the call price of the shares in cash, unless otherwise exempted, he is faced with a capital gain tax if his cost is less than the call price. If, on the other hand, he retains the preferred stock as reclassified, no taxable transaction results and, therefore, no capital gain tax is involved.

From the point of view of obtaining a favorable vote by stockholders, there appear to be three important prerequisites. The first is a situation in which stockholders will understand and agree that the stock which is to result from the reclassification will be a genuinely acceptable piece of investment merchandise which could be sold through regular investment channels. If the stockholders do not believe that the corporation can actually carry out a program of redemption and reissue, they will have no incentive to vote for a reduction in dividend in the case of a corporation in satisfactory financial condition.

The second prerequisite is that what the stockholder is to receive from the reclassification shall be worth the call price of the stock before reclassification. In the Rochester case the problem was simple. The call price, both before and after reclassification, was $105. The corporation believed that the preferred stock reclassified to a 4 per cent rate was worth $105 per share in the market; that is, approximately a 3.80 per cent basis. Subsequent events justified this confidence. In some industrial cases, it has been found expedient to make a small cash payment in connection with the reclassification. An example will make this type of situation clear. Consider a company which can sell a preferred stock on a 3½ per cent basis, the present preferred stock of which is callable at $107. By making a cash payment of $4 per share, a dividend rate of 3.6 per cent would be feasible because a 3.6 per cent dividend rate at $103 provides a stock yield of about 3½ per cent.

In determining an appropriate price basis for a reclassification program, not only the call price before reclassification, but also the call price after reclassification must be considered. In the Rochester case, as has been pointed out, no change was made in the call price. The reclassification procedure, however, makes possible an increase in the call price on the reclassified stock. Whether or not an increase should be made is a business decision which must be carefully considered in connection with the necessary determination that the price relationship in general is sufficiently favorable to obtain stock-

holder acceptance and regulatory authorization.

In order to recall the market atmosphere at the time the Rochester Gas and Electric Corporation reclassification was under consideration by regulatory authorities and stockholders, a few points of reference may be mentioned. On May 10, 1945, a public offering was made of $24,000,000 par value of 3.90 per cent preferred stock of New York Power & Light Corporation at a price of $104 per share or about a 3.75 per cent basis. The price at which the bankers purchased the stock was $102.30 per share or approximately a 3.81 per cent basis. The offering was not immediately oversubscribed. Early in June the syndicate announced that the underwriting agreement would be extended to July 3rd. It was evident to everyone that the sale was unusually prolonged and difficult, although it was finally reported to be a success. On July 21, 1945, Idaho Power Company sold 39,413 additional shares of 4 per cent preferred stock at a price of $105.50 per share.

This price emphasized a definite decline in the market from the preceding month when shares with identical provisions had been quoted $107.50 bid—$108.25 asked. On August 24, 1945, 90,000 shares of 4.40 per cent preferred stock of Monongahela Power Company were issued at $103.50, about a 4¼ per cent basis. On September 1st, Arizona Power Company had a public issue of 12,000 shares of 5 per cent preferred stock at $101. On the 12th of September, Central Electric & Gas Company sold 29,322 shares of $50 par, 4¾ per cent preferred stock, at $53 per share, to the public, which is about a 4.48 per cent basis.

It is not intended to convey the impression that the price of any one issue is necessarily a criterion for any other, but it is hoped that, as a result of these examples, the reader will recall the circumstances of the market at that time. Both the bond market and the preferred stock market were quite uncertain. This was the atmosphere in which the dividend rate on the Rochester preferred had to be decided, for, on September 29, 1945, there was filed the last amendment to the U-1 before notice of the proposed reclassification was sent to stockholders. This was the last opportunity to change the price basis of the reclassification program. The order of the Securities and Exchange Commission authorizing solicitation of proxies came down October 1, 1945, and proxy material was mailed October 8th. The period of solicitation was from October 8, 1945, to November 8, 1945, the date of the meeting.

During this period a very remark-

¶ "The *fact that a reclassification is not an issue of stock has far-reaching importance with respect to the Securities Act of 1933. There is no section of the act which grants an exemption; the act simply does not apply. This fact has been recognized by the Securities and Exchange Commission not only in the Rochester Gas and Electric Case but in the industrial reclassifications which preceded it.*"

able rise began in the preferred stock market. In the early part of October the financial community was looking forward to two substantial market tests known to be coming. These were the preferred stock of Cincinnati Gas and Electric Company and Union Electric Company of Missouri, and were to furnish the cue as to whether the preferred stock market was to proceed at higher or lower prices. On October 21, 1945, the Cincinnati offering was made. The company offered its stockholders $27,000,000 of 4 per cent preferred stock at $106 a share. This stock was promptly oversubscribed and was soon $108 bid. Following this success of the Cincinnati offering, on October 27, 1945, Union Electric Company of Missouri sold 40,000 shares of preferred stock with a 3.70 per cent dividend priced to the public at $101.75. These transactions were adequate demonstrations that the 4 per cent preferred stock of Rochester Gas and Electric Corporation was easily worth $105 a share and may have been persuasive in obtaining the support of certain stockholders for the reclassification program.

THE third prerequisite to success of reclassification is personal contact with stockholders. To the extent that the experience of the Rochester Gas and Electric Corporation is a criterion, it is clear that, at this stage of public understanding, stockholders in sufficient number to authorize a reclassification program will not vote for it unless it is explained to them orally. In the case of the Rochester reclassification, a nationally known organization, experienced in the problems of proxy solicitation, was employed for its advice and to make the actual oral solicitation. The difficulties encountered in the solicitation were few, but the physical problem of contacting stockholders, either in person or by telephone, was substantial.

The advantages to the corporation in preferred stock refinancing through reclassification are several and important. One of the most obvious advantages of this method of refinancing is in preserving small stockholdings within the franchise territory of the corporation and within the state in which the corporation operates. In the case of Rochester Gas and Electric Corporation, much of this preferred stock distribution was obtained in former years through customer-ownership campaigns and similar methods of distribution at considerable expense. In spite of the fact that this method of distribution was so high in cost that it is not generally followed at the present time, the result has advantages which it is desirable to preserve, especially when this can be accomplished by reclassification without substantial additional expense. Another advantage of the reclassification process is that it tends to bring representatives of the company into personal contact with stockholders in a more direct and intimate way than usual. This results in a better understanding of the corporation's operations, policies, and problems.

AS previously suggested, refinancing by reclassification is definitely a labor-saving device. The papers required for modification of the terms and provisions of preferred stock are much less voluminous than those required for redemption and subsequent issue of securities under the Securities

Reclassification of Corporation

"RECLASSIFICATION of Rochester Gas and Electric Corporation preferred stock was a good financial program and a good preferred stockholder public relations program. It fulfilled the obligation of the corporation to permit as many preferred stockholders as possible to retain their investment at a rate fair to both the stockholders and the corporation."

Act of 1933. In the first place, the statement required for proxy solicitation is a much smaller and shorter document than the registration statement. The proxy statement is designed to give the stockholder the information which is germane to the decision he is asked to make. The registration statement, on the other hand, is the answer to a series of questions designed to cover every business situation which might exist in any corporation, together with practically endless accounting schedules to match. Included in the registration statement, or as exhibits to it, are a substantial number of other documents sufficiently distinct in character to be known by separate names. Included among these are the bidding prospectus, statement of terms and conditions of bids, form of bids, purchase agreement, prospective bidder's questionnaire, public invitation for bids, posteffective amendment (reporting results of bidding and making changes in documents required thereby), dealers' selling agreements, public offering prospectus, Form T-1 regarding affiliations, copies of rate schedules, and copies of material contracts including franchises, to mention a few.

In addition to eliminating the preparation or organization of this voluminous material, the reclassification makes unnecessary the closing procedure which is always involved in connection with the redemption and reissue of securities. Those who have prepared papers for large closings will recognize a substantial labor saving at this point. In the preparation of a proxy statement, the registration statement ritual with respect to the qualification of experts is avoided and the problems of qualification under Blue Sky laws are eliminated.

IT will be recalled that, for the purpose of determination of corporation surtax net income (with some important qualifications), only dividends paid on public utility preferred stock

TABLE

Estimated Cost of Call and Retirement
Of $12,000,000 Par Value of Preferred Stock
And
Issue and Distribution
Of a Like Amount of New Preferred Stock

Underwriting Commission	$204,000
Duplicate Dividends	115,000
Printing	30,000
Legal Expense	25,000
Issue Tax	13,200
Advertising Notices	6,000
Auditors' Fee	5,000
Transfer Agent and Registrar Charges	5,000
Stock Certificates	2,500
Public Service Commission Filing Fee	1,600
Securities and Exchange Commission Registration Fee	1,200
Miscellaneous and Unforeseen	11,500
	$420,000

Estimated Cost to Exchange
$12,000,000 Par Value of Outstanding Preferred Stock
For $12,000,000 Par Value of New Preferred Stock

Underwriting and Exchange Commissions	$ 72,000
Dividend Adjustment	35,000
Printing	35,000
Legal Expense	25,000
Issue Tax	13,200
Transfer Agent and Registrar	5,000
Accounting Fee	5,000
Advertising Notices	6,000
Stock Certificates	2,500
Public Service Commission Filing Fee	1,600
Securities and Exchange Commission Registration Fee	1,200
Miscellaneous and Unforeseen	7,500
	$209,000

Estimated Cost of Reclassification and Retirement Program
Of Rochester Gas and Electric Corporation

Legal Services	$21,500
Proxy Solicitation and Advice	25,000
Transfer Agent and Registrar Cost	14,000
Printing	3,600
Advertising Notices	2,000
Stock Certificates	2,500
Miscellaneous and Unforeseen	7,400
	$76,000

issued prior to October 1, 1942, may be deducted. In view of the fact that a reclassification is merely a modification of terms of an old stock and not an issue of a new stock, the tax saving permitted under this section of the revenue code is not lost if the stock reclassified was issued prior to October 1, 1942.

The cost of reclassification is the lowest of that of any known method of accomplishing preferred stock refinancing. The cost of reclassification as compared with redemption and re-

issue, or with exchange, is very favorable to reclassification. This is shown in some detail in the table on page 612.

In addition to the costs compared in the table, there is the call premium to be considered. In case $12,000,000 par value of preferred stock of Rochester Gas and Electric Corporation had been redeemed, a call premium of 5 per cent would have been paid. This would have involved a cash disbursement of $600,000 and also would have resulted in a charge to surplus in a like amount. In the reclassification program, no such disbursement occurred, and, of course, there was no charge to surplus of this kind. In other respects, however, accounting treatment was similar to that which would have been required in a conventional refinancing or exchange.

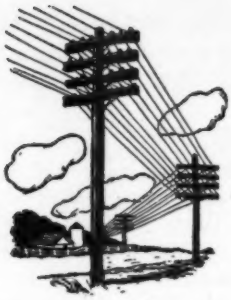
The legal basis of the Rochester Gas and Electric Corporation reclassification is quite simple, although occasionally it has been misunderstood. Under the laws of the state of New York, this special type of reclassification is not an issue of stock. The fact that a reclassification is not an issue of stock has far-reaching importance with respect to the Securities Act of 1933. There is no section of the act which grants an exemption; the act simply does not apply. This fact has been recognized by the Securities and Exchange Commission not only in the Rochester Gas and Electric Case but in the industrial reclassifications which preceded it.

Reclassification of Rochester Gas and Electric Corporation preferred stock was a good financial program and a good preferred stockholder public relations program. It fulfilled the obligation of the corporation to permit as many preferred stockholders as possible to retain their investment at a rate fair to both the stockholders and the corporation. Furthermore, these stockholders retained a thoroughly modernized preferred stock, with the protective provisions which would have been required by the Securities and Exchange Commission in the case of a new issue, complete with the customary restriction on the payment of dividends on common stock, except out of earnings subsequent to December 31, 1944, available for that purpose.

More Markets for Government Power

"The government should not be in the position of having but one customer for its power nor dependent entirely upon the provisions of one contract and the good will of that one customer. The government should dispose of its power to numerous customers, including the company, with such individual contract provisions as would be most appropriate to protect the interests of the government and satisfy the requirements of each of these customers. In other words, the government should have the advantage of a diversified market."

—George P. Miller,
U. S. Representative from California.



If REA Grows Too Generous

It may, in the opinion of the author, by a reckless handling of its business thwart the program for which it exists.

By ERNEST CLIFFORD POTTS

Some observers are questioning the current postwar policies of the Rural Electrification Administration. The writer is one of these.

The record of this Federal agency's operations as observed in the state of Oregon is spotted. It has seemed lacking in soundness. This has been a conclusion with respect to past operations. Now there patently is a lowering of standards in a sort of feverish rush to expand farm electrification wherever there develops a request for it.

Among the first eight electric coöperatives established in Oregon, two are now written off as failures. Examination of the facts seems to indicate that they were set up along reasonably conservative lines, save perhaps in the matter of rates. That in a comparatively short span of time two of eight ran into insolvency raises a question as to the chances of success for REA projects now being set up in Oregon and adjoining states on a much less conservative basis.

If, for illustration, two REA-financed coöperatives in which the investment averaged $482 per customer failed to make good, just what is to be expected of others being established in the present grand rush, with investments running up to $1,000 per customer? Is it safe practice to saddle upon an electric coöperative of good record sets of new extensions requiring a high per customer investment, or having an average of appreciably less than two customers per pole mile.

There is strong suspicion in minds of observers of the Far West, other than the writer, that the Rural Electrification Administration in its postwar operations has adopted a very free-handed, if not actually reckless, course. There is more than a fleeting suspicion that political factors nowadays weigh rather heavily in the agency's practices.

Indulgence is asked as attention is directed to some of the conceptions inherent in the origins of this paternalistic Federal agency.

IF REA GROWS TOO GENEROUS

ORIGINAL objectives of the REA program were admirable. There was recognition for the fact that the nation contains innumerable communities deserving to have electrical service and ripe for it, at rates not too many steps above those prevailing in populous centers of the same general region. The setting up of a Federal agency to help such groups of ruralites plan, finance, and construct facilities to provide lights and power for their farms and homes was a worthy objective. While there could have been question as to the extent to which Uncle Sam should function as banker for the projects, the program, in its broad conceptions, deserved the votes in Congress which authorized the agency and its program.

Attention is called to the fact that rural folk of the United States, over preceding decades, created literally thousands of small mutual companies and associations by way of bringing telephone service to their farms and homes. They helped themselves to this modern convenience without aid from the government. Then came Franklin D. Roosevelt and new theories as to the functions the government should perform for its people. REA stands as one of the early paternal mechanisms evolved to extend specific aid to a large and influential segment of the nation's population.

THE new reasoning was that the farmers and residents in farm communities ripe for electrical service should not need to subscribe the money necessary to create the utility as they had been willing to do in bringing themselves telephones. Just let them get together, form their own association or corporation, approach REA with some plans for facilities, then make their request for the necessary money, whereupon, barring some unexpected obstacle, the money would be forthcoming at low rate of interest and on easy repayment terms. Provision was made that the coöperative could borrow not only for its own financing needs but also could obtain money to be passed along to members to enable them to purchase the devices and apparatus needed on their farms and in their homes so they could make use of the electricity. That was the Rural Electrification Administration — unnecessarily paternalistic, but designed for very commendable functions.

By the Pace Act of 1944, interest charge on REA loans, which had been averaging around 2.56 per cent, was reduced to a flat 2 per cent. New borrowers are given opportunity to delay the start of interest payments for two or five years. Instead of a 25-year loan repayment limit, this is now extended to thirty-five years under the new act. The reduction in interest rate more or less reflects a lower cost of money to the government. There is no such explanation relative to the lengthening of the repayment period, with its accompanying reduction in size of the periodic instalments to be paid by the borrowing coöperative. One must assume that REA helped get the repayment provisions of the old law relaxed because of experiences making the need for such relaxation felt.

IT appears that not only have the foregoing relaxations of loan repayments and of interest rate been effected in changes of law, but that the REA executives have gone farther on their

own account and lowered basic standards originally established for the borrowing coöperatives. This current lowering of standards appearing most obvious to observers looking from the outside relates to the granting of loans for construction of lines having appreciably lower per mile customer average and of loans requiring substantially greater costs, measured on per customer basis.

A key premise at start of this discussion was that standards required to be met by associations applying for financing in the past have proved to be below rather than above conservative levels. That view is not new, having been expressed by a number of observers. If facts prove that there now is a lowering of safeguards never exactly adequate, then the developments easily may presage trouble. We pass to relevant facts.

Public disclosures just at the end of 1945 that two REA coöperatives in Oregon, the writer's home state, had confessed insolvency came as a surprise. This was the greater because the associations, when bailed out, proved to have been in default more than a year on their debts to REA.

THE larger of the associations confessing failure was the Nehalem Valley Electric Association of Jewell, third established in Oregon and nine years old. Last detailed report showed that the association had borrowed $119,000 and had 217 customers. Members are chiefly farmers and growers of fruits and nuts, with a smattering of sawmill and forest workers. So much of the story of this failure is told in the election call sent out to all members last November by the coöperative's secretary that the full text of the message is presented on page 618.

The members of this pioneer project showed themselves quite averse to any big increase in their electric bills. Report was that only three voted against the proposed merger. The great preponderance of the favorable vote is entirely understandable when one notes the "or else" alternative of doubled rates—"we will have to increase our rates 100 per cent"—set before the members.

A pertinent question is generated by the quoted statement of Secretary Perkins. It is this: How could it happen that the Rural Electrification Administration set this coöperative up in business under conditions which brought earnings only one-half as great as needed—or nearly that inadequate, if the secretary possibly exaggerated a bit by way of frightening the members? Patently, either the rates were too low or other basically faulty

¶ "AMONG *the first eight electric coöperatives established in Oregon, two are now written off as failures. Examination of the facts seems to indicate that they were set up along reasonably conservative lines, save perhaps in the matter of rates. That in a comparatively short span of time two of eight ran into insolvency raises a question as to the chances of success for REA projects now being set up in Oregon and adjoining states on much less conservative basis.*"

conditions held earnings too low. These other conditions might be too low average use of electricity by the customers—common REA "ailment" —or too few customers in relation to investment. This latter explanation seems ruled out by the fact that there were 217 customers in relation to $119,000 fixed debt, or an average of $548 per customer. There is no intimation that operating costs were too high.

WHILE low per-customer consumption of electric energy apparently was a factor in the failure, the more fundamental trouble of the Nehalem Valley coöperative doubtless was a rate schedule too low to fit the situation. The tendency of the electric associations and public power districts of the Pacific Northwest to set their rates too low has been fairly common. Contributing to this mistake was the untrustworthy propaganda of the public-power crusaders. It was not at all unusual for the propagandists to proclaim that the publicly owned utility soon would be able to provide electricity at lower rates than charged by the business-managed companies. Another contributing factor was chargeable to the Bonneville Power Administration. The BPA management, even from its earliest days, publicized what it termed "Bonneville objective rates." These hypothetical rates were much too low ever to be proper for the average rural electric coöperative, but sponsors of these frequently were misled into thinking they might from the first enjoy rates close to that "objective" level.

The Nehalem Valley association has been swallowed into the newly formed West Oregon Electric Coöperative in accordance with the timely salvage scheme devised by the REA experts. Views of the other groups which set up the West coast project with respect to the merger have not come to public notice. That they have not relished this absorption of a large group of additional members who have not paid their way and who bring some accumulated past-due debt with them is a reasonable assumption.

JORDAN VALLEY ELECTRIC COÖPERATIVE, INC., in a prosperous farming and sheep-raising community of eastern Oregon, was written off last November 15th. Like the other association, Jordan Valley Co-op got more than a year behind in its payments to REA. Its loan debt was low, both in the aggregate and on per-customer basis. It was $30,000 and the utility was listed as having 92 customers. As these figures suggest, the territory served was compact, with the hamlet of Jordan Valley of some 200 population as the core.

The business and property of this insolvent association were completely taken over by Idaho Power Company. Payment of the debts was the consideration, though the power company pledged itself to make substantial improvements and extensions.

In this case, as in the other, a statement by an executive tells about all the pertinent details of the failure. At the time of the transfer, President V. P. Laca of the coöperative made a public statement in which he said:

> Service has been supplied by this system at rates approximately 30 per cent above the Idaho Power rates. After more than five years of operation the cumulative results show that the association has not had sufficient earnings to take care of its loan payments after operating expenses, without allowing anything for depreciation or re-

Appeal to Which REA Coöperative Members Responded In Voting Themselves Out of Business

A RAISE IN RATES?

Not if every member of the Nehalem Valley Coöperative Electric Association will read this and do as instructed.

As most of the members know, we have not been able to meet the payments on our note to the REA for a little over one year. Your board of directors called upon the REA for help to figure out a solution whereby we could continue to give electric service to the people in this community, preferably without an increase in rates. We have been given a chance by the REA, which holds our note, to merge with the West Oregon Electric Coöperative, Inc., which is a combination of several small co-ops like our own Nehalem Valley Coöperative Electric Association, which merged and bought out the Vernonia Power Company holdings. By merging with the West Oregon Electric Coöperative, Inc., we will be able to cut down our overhead and in that way will be able to meet our obligations to the REA.

If we do not merge we will have to increase our rates 100 per cent in order to meet our loan payments.

Now please cast your ballot immediately as we need a two-third majority to get this through.

(Signed) GEORGE N. PERKINS, *Secretary*

placement of the property. The directors came to the conclusion that the continued operation of the property was not economically feasible and could only result in further losses under the present circumstances. They requested and obtained from Idaho Power Company an offer to purchase and take over the system at a price which would enable the Jordan Valley Electric Coöperative, Inc., to pay its loan in full to the Rural Electrification Administration and all other indebtedness.

In that the Idaho Power Company has agreed to extend rural lines both to the west and southeast of Jordan Valley and to make service available at the uniform Idaho Power Company rates, we feel that we have made the proper decision, for, in the final analysis, what we desire is adequate and reliable electric service to meet the growing needs of the territory.

THE Jordan Valley coöperative failed without ever having become

overambitious and extended its lines to thinly settled neighborhoods. Its members are getting much more dependable service from the investor-owned utility at substantially lower rates. As to the construction of those promised extensions, it is to be noted that the power company is in a very different position than was the tiny coöperative. The widely ranging power company is not precluded from making service extensions which at first do not prove profitable. Under sound procedure, the "co-op" was.

There is a point with respect to the two confessed failures which must not be overlooked. The two managements succumbed to discouragement at the very time relief was at hand via the Pace Act. Interest charge on the borrowings had just been reduced about 25 per cent. Yielding even more relief was the new provision under which payments on debt to REA may be spread over ten additional years for any borrower proving need for time extension. In spite of these definite and substantial ameliorations of loan obligations, the coöperatives decided against trying to continue. These facts suggest that their plights were serious.

To this point this discussion has dealt with facts of the past. To many who read them here, the facts do not tell a new or unknown story. There is need for them here as background for appraisal of the new course now being pursued by REA—this agency's postwar program. There is no lack of evidence that this new program is a distinct liberalization of the old. In fact, the REA, in its monthly *News* and its press releases, conveys the idea that there devolves upon it a sort of sacred mission to see that all farms of the United States are electrified. There is effort to influence Congress to view REA in that light. There is effort to "sell" to the nation the idea that the government virtually owes it to farm dwellers everywhere to see that they get electric service speedily.

In order that the more remote farm sections may be given electricity there must be an easing of standards which in the past governed the establishment of new projects and the extension of service into new areas. This relaxation of standards has been started. Some proof will be given in a moment, but the easing of requirements is so evident no great amount of proof seems in order.

From REA headquarters came announcement recently that new allotments to agencies in the three Pacific Northwest states of Washington, Oregon, and Idaho are expected to total $18,700,000. This sum virtually will double the $19,702,361 allocated in these states up to June 30, 1945. Of the total sum of intended loans, it was said that roundly $13,000,000 would be spent on lines to carry electricity to 13,300 new users. The figures show at a glance that the facilities investments alone are to equal almost $1,000 per customer. In the two Oregon co-ops which failed, the sum of $149,000 provided facilities for 309 members. The investment equaled $482 per member.

At end of September, 1945, the REA agencies in Oregon were using 2,951 miles of line to serve 10,279 customers. This means an average of 3.47 customers per mile of line. Lacking the figures involved in the prospective lending of $7,000,000 more in Oregon,

¶ SINCE *this article went to press, the author, Mr. Potts, writes that across the eastern border of Oregon the Long Valley Power Coöperative of Idaho had voted 273 to 5 to sell its REA-financed system to the Idaho Power Company at anticipated rates about 33 per cent lower than those of the coöperative. This followed an earlier purchase by the same company of the REA-financed co-op in Jordan Valley, Idaho.*

comparison is made with figures for the trio of states. In them, according to the announcement, 3,700 miles of line are projected, to take electricity to 10,800 new users. That figures out as an average of 2.9 customers per mile of line—a customer density of 83 per cent in comparison with that in the earlier Oregon coöperatives.

If the average farm use of electricity even approached that hinted at by the public power enthusiasts, perhaps a customer density of no more than three per mile might sustain a rural electric utility. The writer is not an expert as to that. The zealots encountered by him talk as though the farmers lacking electricity are sadly handicapped and much to be pitied, eager to have electric current do a lot of work for them—as it handily does. Thus it is easy to imagine the amazement of this writer on reading in *Rural Electrification News* (issue of March, 1944) that the average monthly consumption of electricity by customers of all REA-financed systems of the nation in their fourth year was 71 kilowatt hours. This equals 852 kilowatt hours a year. It must amaze many observers to note how much this average farm and rural customer use falls below the 1,200-kilowatt hour annual average usage registered in the past year for residential customers of the entire United States. Average monthly energy consumption for the REA agencies in their third year was reported as 60 kilowatt hours and for those in operation thirteen to twenty-four months was 55 kilowatt hours.

IN the face of facts such as here given, REA recently has been lending freely to finance lines in Oregon which start with even less than a customer per mile and, in some instances, where the line investment will exceed $1,000 per customer. Proof is presented in newspaper reports here quoted, in condensed space-saving form:

Sherman County Journal, Moro—"This is the start of a $350,000 postwar program to bring REA power to farmers throughout Sherman and Wasco counties," Manager Eric Johnson of the Wasco Electric Co-op said. . . . The project will mean the construction of 342 miles of line, serving 342 new customers . . . The new Sherman county extension will serve 16 farmers. The lines, 20 miles in length, extend . . .

Oregon Grange Bulletin, Portland—Bid of $296,845 by Electric Construction Co. of Tacoma, which must be . . . signed by Rural Electrification Administrator Claude Wickard, assured . . . construction of 265 miles of coöperative, nonprofit rural electric distribution line . . . 165 miles of the line will be constructed in Sherman county, and 141 farmers who have never had central (*sic*) electric service will be supplied.

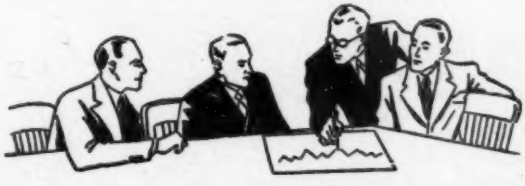
Spokesman, Redmond—The Central Electric Coöperative has received a new loan allotment of $75,000 from the Rural Electrification Administration . . . This . . . will finance construction of 50 miles of lines to

provide electric service to 64 farms and other rural customers . . . One contract was let last August . . . The contract . . . covers 71.3 miles and will serve approximately 68 farms upon completion.

APPROVAL of the fundamental objectives of the Rural Electrification Administration in its early days was almost universal outside of a few unduly selfish power company circles. It has long been the custom of the government to deal generously with the farmers, so perhaps no fuss should be made because this agency advances 100 per cent of the cost of rural power systems and bears supervisory costs which otherwise would fall upon the beneficiaries. It might well be recalled, however, that this program was launched when the country was in a terrible depression; "make-work" projects were everywhere prevalent; the farmers lacked funds. Today the farmers are lenders, and the government borrows wherever it can.

It is a thought of the writer that the American taxpayers, if not the people as a whole, are soon going to demand that directly and through Congress REA, as an agency operating wholly with U.S. Treasury cash, conduct its affairs somewhat according to business principles. Any theory that this Federal agency is vested with a grandiose mission of rapidly placing electricity on every farm not otherwise obtaining it had better be dropped.

IF reckless handling of its business becomes evident, a disastrous result is likely to be felt by REA. By its own acts it will thwart itself—the program for which it exists.



Complaints on REA Co-op Service

WRITING to the VERNONIA *(Oregon)* EAGLE *on December 11, 1945, Noble Dunlap, local director of the West Oregon Electric Co-op, indicates some dissatisfaction with service in that area, following the absorption of the defaulting Nehalem Valley coöperative by the West Oregon group. Mr. Dunlap stated in part:*

"I have always believed REA in principle to be a very fine act to promote better living in general. However, I am now convinced that principle and purpose have given away to politics, with the main objective of some or most of the employees to hold a job by pleasing a boss either in St. Louis or Washington, D. C., and there seems to be plenty of jobs being held."

Government Utility Happenings

Private Company in Accord With U. S. Power Agencies

RECENT announcement of a $612,500 loan by the Rural Electrification Administration to a private utility company marked the conclusion of a somewhat unique agreement between the company and several Federal power agencies.

Spokesmen for these agencies—REA, the Bureau of Reclamation, and the power division of the Interior Department—are hailing this compact as a demonstration that Federal and private power interests can develop amicably in the same areas. To some extent, at least, they are supported in this contention by representatives of the private utility involved, the Montana-Dakota Utilities Company of Minneapolis.

The REA loan to the Fidelity Gas Company, a subsidiary of the Montana-Dakota Company, will finance 70 per cent of the cost of construction of new transmission facilities by the company. Besides looping the company's present transmission system, the new facilities are expected to bring Federal power to REA-financed distributive coöperatives in North and South Dakota and Montana. Through an agreement with the Interior Department, energy for these coöperatives will be delivered into the company system from the Bureau of Reclamation's power plant at Fort Peck, Montana.

The coöperatives will purchase power at wholesale directly from the Bureau of Reclamation, with Montana-Dakota receiving payment in power from the bureau for delivery of this energy. This arrangement will bring Fort Peck power to 18 REA-financed co-ops — 13 in North Dakota, 3 in South Dakota, and 2 in Montana.

MONTANA-DAKOTA plans to build some 284.5 miles of transmission lines, together with necessary substations and switches, under the terms of the loan. The new lines, to be constructed in three distinct sections, will follow these routes: Section A, from Reserve, Montana, to Zahl, North Dakota, south to Williston, North Dakota, then north and east to Noonan, North Dakota; Section B, from Battleview Junction, North Dakota, east to Kenaston, North Dakota, with a branch running south to Stanley, North Dakota; Section C, from Glendive, Montana, to Wibaux, Montana, then east to Dickinson, North Dakota.

The company already has a 15-year contract with the Bureau of Reclamation for 5,000 kilowatts of Fort Peck power for distribution to its own consumers. Under the terms of this agreement, the bureau has also contracted to supply an additional 5,000 kilowatts of "surplus power" from Fort Peck when available, but this provision is subject to cancellation within thirty days. Other provisions of the contract indicate the extent of future negotiations which may be undertaken by the company and the bureau.

F. R. Gamble, treasurer of Montana-Dakota, commented:

> Our company's negotiations on this contract extended over a considerable period of time. Preliminary negotiations were started in the Bureau of Reclamation office at Denver and later transferred to Washington, with officials of the bureau, the power division, and other agencies of the Interior Department participating.
>
> One provision of the contract grants to the United States a license to transmit elec-

tric energy over our transmission system and includes use of all facilities of the company, including transforming, switching, control, and protection equipment necessary or used in the transmission and delivery of power to the government's customers. These customers, as defined by the contract, include irrigation and drainage projects, and rural electrification projects financed by the government. War plants financed by the United States and having a normal maximum demand of 1,000 kilowatts or more also were specified as government customers but, naturally, have ceased to be a factor in the power distribution picture since the contract was concluded.

At the time of the contract's execution we were serving a number of irrigation and REA projects in North Dakota and Montana. Under terms of the contract, we agreed to assign the contracts with all these customers to the Bureau of Reclamation, although a number of them were written for periods up to ten years. These projects are to be served directly by the government at rates agreed upon between the customer and the Bureau of Reclamation.

In consideration of the power sold to the company by the bureau we have agreed, as set forth in other provisions of the contract, to pass on to our customers in the area served, through appropriate rate reductions, any and all savings. The determination of these savings is subject to the approval of the Secretary of Interior. The contract provides that the company shall supply the Secretary with data and information which he may request and he shall have free access to books and records of the company.

POWER operations at Fort Peck currently have been suspended during the installation of a new 15,000-kilowatt generating unit. It is expected that this work will be completed late in June, Mr. Gamble said. The initial plant at Fort Peck consists of a 35,000-kilowatt generating unit.

Mr. Gamble declared that his company hopes to contract for additional Bureau of Reclamation power, both from Fort Peck and from the Garrison and Oahe dams, now under construction, when these are completed. Such agreements, he added, would permit his company to retire a portion of its steam-generating plant, maintaining the remainder for stand-by purposes.

Interior Department officials reported that the Bureau of Reclamation still is planning to build certain transmission lines of its own. They pointed out, however, that the agreements with Montana-Dakota made it possible for the bureau to avoid a costly duplication of facilities in distributing Fort Peck power, facilities which would be many months in building if and when the necessary appropriation were obtained from Congress.

REA officials also were reported to be pleased with the arrangement. "It makes possible a program of area coverage expansion by the coöperatives which we estimate will result in the serving of 35,000 farms and other rural consumers in the area within ten years," one spokesman reported. "The lowest wholesale rate now available to rural electric coöperatives in North and South Dakota is 11 mills per kilowatt hour, as compared to the Bureau of Reclamation rate of 5.5 mills."

According to this official, a somewhat analogous situation exists in the Pacific Northwest, where 12 REA-financed coöperatives are receiving Bonneville Power Administration energy through transmission facilities of private power companies under "wheeling agreements" entered into between the companies and Bonneville.

The coöperatives have concluded wholesale contracts with Bonneville in the same manner as other coöperatives served directly by BPA transmission facilities. Power companies participating in these "wheeling agreements" are the Washington Water Power Company, Pacific Power & Light Company, and Mountain States Electric Company.

Army Engineers Seeking Funds For Basin Development

APPEARING before the House Committee on Flood Control during recent hearings on the Flood Control Bill for 1946, Lieutenant General Wheeler, Chief of Engineers, USA, especially urged the authorization of new funds for the development of river basin projects.

Expenditures on projects already under way, plus the estimated cost of

work contemplated under recent appropriation bills passed by the Congress, General Wheeler said, would commit practically all the funds that have been authorized for flood-control work in these basins. Although Congress has approved "comprehensive plans for flood-control and other beneficial water uses in our large river basins," he added, "the authorizations thus far granted in the Flood Control acts have provided only for the initiation and partial accomplishment thereof. These money authorization ceilings are a great deal less than the total estimated costs of the approved plans."

He continued:

> For instance, in the Ohio river basin, projects already completed or now under way will use all of the available authority; increase in money authorization is required for badly needed local flood-protection projects where the flood hazard is serious and for the large reservoirs so important to the successful control of Ohio river floods. Projects in the Missouri basin plan for which appropriations have already been made will cost to complete somewhat more than the money authorization now available. Expeditious progress on all of these basin-wide plans throughout the country is the backbone of the flood-control program.

GENERAL Wheeler also submitted a chart showing the status of funds required and the amounts authorized for the completion of approved development plans for seven basin-wide projects. The chart revealed the estimated cost of these developments as follows:

Ohio River	$1,021,266,000
Arkansas River	153,286,000
White River	178,339,000
Missouri River	685,238,000
Upper Mississippi	128,091,700
Willamette River	121,522,900
Los Angeles County Drainage Area	273,498,000
Total estimated cost	$2,561,241,600

Projects under way or already completed in these seven regions will cost an estimated total of $976,690,000, the chart showed.

General Wheeler also commented upon the rise in the estimated cost of flood-control projects in general subsequent to the submission of Engineers Corps' estimates on such projects and their authorization by Congress. This rise in costs, he declared, was due to the following factors:

1. The fluctuating level of prices and values in general. "The present level of construction costs is at least 25 or 30 per cent higher than the corresponding costs in the immediate prewar years. . . . It is impossible to forecast where price levels will be two or five years or even six months from now, but it is probable that they will not be materially less in the next few years."

2. Advances in flood-control engineering. ". . . the techniques of flood-control engineering are constantly being improved. We are sometimes able to improve plans of authorized projects (through new techniques of engineering) so as to provide greater benefits of protection and security. Sound procedure dictates that we should build, to the best of our knowledge, the most up-to-date engineering projects even though somewhat higher costs are necessary."

3. Changes in the scope of individual development project plans. This is "probably the most frequent cause for exceeding original estimates. It is rare, except in the smallest local protection projects, for a project to be constructed exactly as planned in the beginning. Opportunities appear for improving or expanding the protection originally planned and almost always justify the construction of a more expensive project than originally contemplated."

TVA Unveils New Farming Aids at Machinery Exhibit

NEW types of farm machinery and equipment developed by engineers of the Tennessee Valley Authority were displayed at a special exhibition at the University of Tennessee at Knoxville recently. Purpose of the exhibition, it was announced, was to encourage manufacturers to produce the new devices, which consisted of farming aids ranging from curers for sweet potatoes to peanut harvesters.

In line with TVA's policy of aggressive promotion of new uses of electric power, a large amount of the gear and gadgets displayed were powered by electric motors, although a number of farm aids of a different type were included. All

the exhibits were produced by the TVA Agricultural Engineering Development Division, in coöperation with certain colleges.

The electric curer for sweet potatoes is said to reduce the wastage of uncured potatoes from an average of 25 per cent to 5 per cent. It is estimated that curers, which are built around an electric heating unit, could be produced to sell at prices ranging from $17.50 to $35 each.

Another featured exhibit was a feed grinder, designed especially for small farms. Powered by a one-half, three-quarters, or a one-horsepower electric motor—with a control arrangement to regulate the flow of grain into the mill—this grinder was reported capable of grinding from 1 to 10 bushels per hour, depending on the fineness of the feed desired. It was suggested that such a grinder might be used as a community flour mill.

FARM women are described as going into something approaching delirium over a somewhat complex number called the "electric pump-sink cabinet." This is an assembled unit consisting of a kitchen sink with faucets, a pressure tank, a motor-driven pump, automatic electric controls, an extension cable with plug-in connections, and the necessary pipe fittings to reach the farm well. This unit, it has been suggested, can be fitted with connections to serve a number of farm needs beyond the kitchen, including those of a bathroom. It is further reported that the unit can be installed without the aid of an expert plumber.

Nonelectric exhibits included a sweet potato vine harvester (the vines are used for fodder); a trailer thresher, which can be towed behind an automobile and which already is in production; a peanut harvester, tractor-drawn; and a new portable sprinkler for overhead irrigation.

Public Service Commission Opposes SWPA Project

SOUTHWESTERN POWER ADMINISTRATION plans for a vast Federal system of transmission lines and stand-by steam-generating plants drew the fire recently of the Louisiana Public Service Commission.

In a resolution sent to Louisiana's delegation in Congress, the state regulatory body urged the defeat of this project, for which SWPA has submitted a budgetary request of $23,000,000 for initial construction during 1947. This request, as a part of the annual Interior Department Appropriation Bill, has stirred considerable congressional debate in recent weeks.

The commission's resolution declared that the state board was "very interested in having the Southwest receive the benefits of the cheap" power produced by hydroelectric plants completed and under construction in the SWPA area. However, the resolution continued, the commission "is unalterably opposed to the present preferential and discriminatory scheme for the distribution of such power, and to the wasteful and unnecessary duplication of existing transmission lines" which would result.

Under Interior Department policies, the commissioners held, "such cheap, tax-free power would be made available first to certain categories of preferred distributors [public bodies, municipalities, and coöperatives] . . . to the disadvantage of existing privately owned, regulated utilities." This, it was added, would result in losses to privately owned utilities of their most valuable markets, "thus inevitably forcing rate increases in the sections not receiving such preferential treatment."

The resolution termed the expenditure of public funds for such purposes "discriminatory, confiscatory of private property, economically unsound, unnecessary, and inefficient."

The Louisiana commission cited the offer of 11 private utility companies to distribute, with preference to municipalities and public bodies, all of the power produced at hydroelectric plants operated by SWPA. The commission favors such a plan, the resolution said.

The resolution was signed by Chairman Lamar T. Loe and Commissioners Wade O. Martin and Herman M. Harris.

Wire and Wireless Communication

SOME uncertainty as to the application of the recent restriction on new building construction to telephone companies has been encountered at the headquarters of the Civilian Production Administration. These restrictions affect all new buildings for any purpose whatever, estimated to cost in excess of $15,000, including cost of labor, plumbing, heating, and built-in furnishings (such as counters) affixed to the realty.

The general purpose of this CPA restriction was to encourage and promote the building of housing units by preventing the diversion of scarce labor and material items into nonhousing construction work. Although primarily aimed at less essential construction, such as theaters and recreational facilities generally, the order nevertheless applies to all types of commercial buildings, including those proposed to be constructed by public utilities to house plant facilities, commercial offices, and so forth.

Cost estimates—for purposes of coming under the $15,000 ceiling exemption—do not, however, include cost of specialized facilities, such as switchboards, switching gear, transformers, and utility plant items generally, which might be housed within such proposed new building units. But where the proposed utility building unit exceeds the $15,000 estimated cost ceiling, it is necessary to obtain CPA approval in the usual form. The uncertainty has arisen, however, with respect to estimating the cost of much larger building units, as to whether the applications for CPA approval have to be processed in Washington or in the field.

Informal instructions have already gone out to some sixty CPA offices in the field to the effect that where the total estimated cost of a proposed utility building is in excess of $1,000,000, the application must be processed in Washington, D. C. This means, of course, that applications for the approval of buildings costing lesser amounts can be processed by the field offices without the necessity of clearing with headquarters in Washington.

THE uncertainty has arisen with respect to the question whether the cost of specialized utility plant facilities, including installations, must be included in this $1,000,000 classification. So far CPA policy is to require that the total cost of the building, including all new facilities installed—whether plant equipment or otherwise—is to be counted in determining whether the $1,000,000 ceiling applies. Utility men feel, however, that, since plant items such as switchboards and central station equipment generally are not by their very nature competitive with ordinary construction materials and labor which might be devoted to the building of housing units, CPA might well exclude them from consideration.

If CPA ultimately decides on this course of action, it will make quite a difference in processing utility applications which could more easily be handled through the field offices. Only very few

proposed new telephone company buildings, during the current year, would amount to more than $1,000,000 if the cost of specialized plant equipment plus installation were excluded. But if these items must be included—and that is the apparent effect of prevailing CPA interpretation—quite a few telephone company and other utility applications will have to go to Washington before ground can be broken on new projects.

* * * *

THE United States Independent Telephone Association has been giving consideration recently to the interesting legal question as to whether the use of radio by a telephone company in supplementing wire service would operate to deprive it of its exemption as a "connecting carrier" under § 2(b)(2) of the Communications Act. As a result of this exemption, most independent telephone companies operate subject only to a very perfunctory form of FCC jurisdiction. The question arises whether the use of radio facilities by such companies would increase FCC jurisdiction.

USITA counsel, Norman S. Case, former member of the FCC and former governor of Rhode Island, has recently rendered a legal opinion, the effect of which was announced by the executive vice president of the USITA, Clyde S. Bailey, to association members. Mr. Bailey's announcement stated:

> . . . The [Case] opinion is generally to the effect that the exemption would not be lost, although it does suggest that some situations might develop which might possibly give rise to an attempt on the part of the FCC to claim jurisdiction.
>
> Upon this question a written legal opinion has also been furnished by the New York law firm of Winthrop, Stimson, Putnam & Roberts to the General Telephone Corporation. This opinion is to the same general effect as the opinion given to us by our own counsel. Likewise a written legal opinion has been furnished to the Gary group of companies by its Washington counsel, the firm of Wheat, May, Shannon & St. Clair. The last-mentioned opinion differs somewhat from the others and leans toward the view that the FCC might conceivably so interpret the statute that an independent company would lose the benefit of the exemption, although stating that there is support for interpreting the statute in such a manner that the exemption would not be lost.
>
> These are days of intense centralization of power in Washington. The disposition of government agencies always is to expand their spheres of activity. The FCC is no exception to this rule. Our association counsel recognizes this and so do we. It could not be visualized when the Communications Act was enacted in 1934 that independent companies might wish to employ radio to supplement their wire telephone service. How the commission will interpret our § 2(b)(2) exemption in the light of such use is a question that only the event will tell. We naturally hope that the commission, when a practical case is before it, will interpret the statute as our counsel thinks it ought to interpret it. But it must be obvious to every independent company that our counsel and our association are in no position whatever to guarantee that the commission will do so. It will, of course, be our purpose stoutly to argue that the commission is without jurisdiction.

* * * *

PRESIDENT Truman signed legislation on April 16th making it a Federal offense to use coercion against radio broadcasters.

Sponsors said the measure is designed to halt certain practices of the AFL Musicians Union headed by James C. Petrillo. It carries penalties of up to a year's imprisonment and $1,000 fine for compelling or attempting to compel broadcasters to: (1) Hire more employees than they want; (2) pay money for services not performed; (3) pay unions for the use of phonograph records; (4) pay again for broadcasting a transcript of a previous program.

The same penalties could be invoked against persons interfering with broadcast of cultural or educational programs originating in foreign lands.

In New York city, Petrillo said he had no comment on the President's action.

* * * *

SYSTEM companies of American Telephone and Telegraph Company have added about 1,000,000 additional subscribers since the first of the year, according to Walter S. Gifford, president, in the quarterly report to stockholders. This is almost twice as many as in any

previous period. About half the 2,000,000 prospective subscribers at the beginning of the year have been taken care of, but new applications continue at "unprecedented levels." About 1,750,000 applications remain to be filled.

The Bell system, Mr. Gifford said, granted further wage increases during the first quarter. "If costs continue their upward trend," he continued, "we shall have to ask regulatory bodies to permit us to increase revenues by increases in telephone rates."

Long-distance service is at a record and 10 per cent higher than a year ago. Construction of long-distance circuits has progressed rapidly, Mr. Gifford said, so that some improvement has been made in the service.

Mr. Gifford expects the shortage of plant and equipment to continue throughout 1946 with the result that present facilities "will be greatly overloaded for some time to come."

American Telephone and Telegraph Company reports for the quarter ended March 31, 1946 (figures for March partly estimated), a net profit of $46,076,000 after charges and Federal taxes on income, equal to $2.28 a share on approximately 20,209,000 average number of shares of capital stock outstanding during the period. This compares with a net income of $40,392,953 or $2.07 a share on approximately 19,514,000 average shares in the March quarter of the year 1945.

For the twelve months ended March 31st, last, net income was $177,323,000, equal to $8.86 a share on approximately 20,014,000 average shares, comparing with a net income of $163,065,879 or $8.47 a share on approximately 19,252,000 average shares in the twelve months ended March 31, 1945.

Bell system (American Telephone and Telegraph Company and its principal telephone subsidiaries) reports for the three months ended February 28, 1946, a net income applicable to the stock of American Telephone and Telegraph Company of $50,225,611 or $2.49 a share. This compares with $46,825,563 or $2.41 a share in the three months ended February 28, 1945.

For the twelve months ended February 28th, last, net income of the Bell system was $182,357,023 or $9.14 a share, comparing with $173,123,906 or $9.01 a share in the twelve months ended February 28, 1945.

* * * *

The National Federation of Telephone Workers (independent), ready to open a campaign to recruit 125,000 new members, last month warned the Electrical Workers (AFL) against "muscling in."

NFTW President Joseph Beirne, in Washington for a meeting of the union's national executive board, said 250,000 telephone workers now belong to the NFTW and "the rest should." Beirne said the executive board was considering a report showing the AFL union has "renewed attempts to muscle in" on telephone work.

"Our member unions," he said, "will resist all such attempts to take over our work. If necessary, we will strike the job or refuse to give service where installation work has been done by other than workers represented by our unions."

There has been no AFL move in Washington to vie with the NFTW and union officials hardly expect one, it was reported.

* * * *

The management of Western Union Telegraph Company is aware of the serious problems facing the company, Joseph L. Egan, president, told stockholders at the annual meeting, held last month. "We are, nevertheless, reasonably optimistic as to our ability to solve them. We believe they can be solved in two ways and we are already at work on both."

For the first two months of 1946 the company sustained a loss of about $4,500,000, of which about $2,100,000 represented the cost of the New York strike from January 8th to February 11th.

The two methods of solving the company's problems, Mr. Egan stated, constitute the rate increase requested of the

Federal Communications Commission on March 19th, designed to offset $19,251,000 deficit anticipated for 1946, and the mechanization of operations to reduce the present 70 per cent of revenues going for payroll, as well as to increase speed and efficiency. The wage expense of the company consumes a greater proportion of revenues than any other industry in the country, Mr. Egan said, and must be reduced by increasing business volume and by mechanization.

Western Union does not have the capital at this time to finance the mechanization program, he concluded, and can only obtain it through improving its credit rating, for which purpose the rate increase is designed.

* * * *

THE American Communications Association, a CIO union, filed an application in the appellate division on April 12th to appeal to the court of appeals a decision upholding the appointment of Samuel Seabury, attorney, as arbitrator of a wage dispute between the union and the Western Union Telegraph Company.

On February 9th, Supreme Court Justice Aaron J. Levy selected Abraham L. Pomerantz, an attorney, as arbitrator as part of an agreement settling a 34-day strike of Western Union employees. The company objected to Mr. Pomerantz's appointment because he had been an American Labor party candidate for office and because of his labor views. Justice Levy vacated Mr. Pomerantz's appointment and named Mr. Seabury. The union appealed the substitution to the appellate division, which upheld Justice Levy's action.

* * * *

UNDER the title, "The Small Telephone Exchange Rate Case," the Independent Telephone Institute, Inc., a company of the Gary group, has recently released for distribution to the independent industry a 32-page printed booklet which provides in clear and simple language an elementary yet highly informative guide to the preparation and prosecution of rate cases by small operating companies.

The booklet, as is explained in the foreword, is intended primarily to benefit *small* operating companies—particularly those having 500 stations or less. The text is therefore frankly and purposely elementary. Avoiding the language of the lawyer or experienced accountant, it reviews in a simple and forthright manner both the things which the small exchange owner should know before preparing a case, and the steps he should take to make his case most effective.

The three principal considerations on which the booklet is based are: first, that the independent telephone industry as a whole would be greatly strengthened if all the small companies in it were and continued to be prosperous; second, that the starting point to most of the things that lead to such prosperity is adequate rates; and, third, that the preparation and filing of a rate case is not as difficult a job as many small telephone managements may have thought it to be.

* * * *

MOBILE radiotelephone service, which will permit telephones on any mobile unit to be connected by radio with the general telephone system, will be introduced in Connecticut on an experimental basis by the end of this year, it was announced recently. Service will be offered first along United States Route 1 between New York and Boston.

The Southern New England Telephone Company has applied to the Federal Communications Commission for authority to set up a transmitting station in New Haven and in New London. These will be so located as to cover Route 1 as well as serve the urban areas along the state's coast. Applications also have been filed by neighboring telephone companies for stations at Boston, Providence, White Plains, and New York city.

Following the experimental period and the filing of necessary tariffs with the Connecticut Public Utilities Commission, the service will be offered in areas along the Connecticut coast. The company also will conduct surveys to determine customer demand for the service in several other parts of the state.

Financial News and Comment

By OWEN ELY

Remarkable Gains in 1946 Utility Earnings Reports

COMPARATIVELY few utility companies issue monthly and quarterly reports, and the table on page 631 lists a majority of those which have appeared recently. All but a few show very substantial gains for early 1946; however, these gains may prove misleading to some extent since the tax accruals early last year were probably on too conservative a basis, and, in addition, there are the benefits this year of refunding operations and savings under the new tax law. Utility companies can hardly expect to maintain any such favorable rate of increase as here indicated. In addition to the abnormally favorable tax comparison, few rate cuts of any size yet have gone into effect, and the utilities still enjoy low fuel costs.

It is obvious that, if the coal strike continues for weeks longer, some utilities may have to curtail operations as their coal piles begin to be depleted. Moreover, as 1946 progresses utilities may begin to feel the effects of the record low rainfall in the East (since January 1st); this might mean eventual use of stand-by plants, and fuel costs for such plants will be more expensive than ever—probably over $5 a ton if the demands of the bituminous coal miners are granted. On top of that would be the rise in freight rates which might boost the figure to $5.25 or about 17 per cent over last year's cost. Only about half of the electric power and light output is protected by coal clauses, according to Dow-Jones, since, as a rule, higher fuel costs can only be passed along to industrial consumers. (Consolidated Edison is an important exception.)

Higher labor costs will also be a factor in the later trend of earnings. Hence the percentage gains of net income shown in the accompanying table will doubtless be sharply reduced as the year progresses. Nevertheless they are an encouraging stimulus to the resumption of equity financing by the utilities—almost a forgotten method of raising new capital.

Utility Analyses by Wall Street Houses

THE latest monthly utility review, issued by Josepthal & Co., includes analyses of American Gas & Power, Minneapolis Gas Light, Illinois Power, Midland Realization and Midland Utilities, New England Gas & Electric, and Public Service of New Jersey. Regarding Minneapolis Gas Light, Truslow Hyde thinks "the stock will probably command good regard among gas company securities and could be expected to sell at 14 to 15 times earnings." Based on a value of 14 and the exchange ratios provided under the amended recapitalization plan of American Gas & Power (now before the U. S. District Court at Wilmington for enforcement), American Gas securities would have the following indicated values: 6 per cent debentures, 122; 5 per cent debentures, 116; common stock, 14; warrants, 9¼. The value of the old common (currently around 19) might work out as high as $22-$26 if a higher price-earnings ratio could be used.

In commenting on the new Illinois Power plan proposed by the company (not the one proposed more recently by North American Company) the review

concludes that common stock earnings would be diluted by conversion of the preferred stock, and share earnings of $2 to $2.75 estimated on the new basis would not make the stock especially attractive, except perhaps on a long-term basis. Commenting on the Midland companies, the review refers to the distribution of Northern Indiana Public Service common stock, which will be made to Midland stockholders. Realization would distribute 1.4 shares for each share of its own stock and Utilities 1.75 shares (with a small amount retained in its portfolio). The cheapest way to buy the new stock, it is concluded, is to purchase Midland Realization, on which basis Public Service might be obtained at a cost of around $16 a share. While the latter is a second-grade stock (because of a 16 per cent stock ratio to total capitalization and a temporary dividend limit to half of available earnings), the stock under normal conditions might earn around $1.75 to $2 a share, it is estimated.

THE new recapitalization plan of New England Gas & Electric should result in a conservative capital setup, according to Mr. Hyde's analysis. He comments as follows on the potential value of the new common stock:

> Estimated 1946 *pro forma* consolidated earnings amount to $1,690,000, equal to 74 cents a share on the common stock before sinking-fund requirements of 10 cents a share. With a strong working capital position and a large amount of liquid funds reserved for construction purposes, the company should be able to follow a liberal dividend policy and an annual dividend rate of

1946 UTILITY EARNINGS

	Period	Net Income (000 Omitted) 1946	1945	% Incr.
Carolina P. & L.	March	$329	$196	66%
Central Maine Power	"	266	266	—
Central Vermont P. S.	"	73	60	22
Dallas Rwy. & Term.	"	45	44	2
Mississippi P. & L.	January	222	86	158
Montana Power	"	774	617	26
Mountain States T. & T.	1st Quarter	1,267	917	39
New England Tel. & Tel.	"	2,401	2,422	D1
North. Ind. P. S.	"	1,543	999	55
Detroit Edison	"	8,189	6,584	25
Niagara Hudson Power	"	4,857	1,964	148
Peoples Gas (Chicago)	"	2,982	1,230	143
P. S. Corp. of N. J.	"	6,932	4,247	64
P. S. Co. of New Hampshire	March	207	159	30
Shawinigan W. & P.	1st Quarter	737	580	27
Amer. Tel. & Tel. (Parent)	"	46,076	40,393	14
Bell system	Two months ended February	5,236	1,301	305
Blackstone Valley G. & E.	March	125	79	58
Engineers P. S.	January	1,018	1,365	D25
Utah P. & L.	February	182	167	9
Cal. Electric Power	"	105	95	11
Iowa Electric	"	31	9	245
Puget Sound P. & L.	"	518	400	30
Amer. Gas & Electric	"	1,996	1,196	68
Central Arizona L. & P.	"	124	90	38
Central States Elec.	"	41	14	193
St. Louis P. S.	"	175	121	45
Sierra Pacific Power	"	70	49	43
Indiana Service	Two months ended February	90	80	13
Kansas G. & E.	" " "	392	267	47
Pacific Tel. & Tel.	1st Quarter	5,416	5,558	D2
Tampa Electric	February	164	104	58

D—Decrease.

60 cents a share would appear reasonable. Although the company is not considered among the strongest utility systems and its common stock would probably sell at a relatively conservative price-earnings ratio, it should command a price of 11 to 12 which would be 15 to 16 times estimated *pro forma* earnings, and afford a return of 5 per cent to 5.45 per cent on the basis of a 60-cent dividend rate.

On this basis the old $5.50 preferred stock might be worth about 122-144. (The stock is currently selling around 123 and has arrears of $54.)

Regarding Public Service of New Jersey, the Josepthal review holds that the position of the preferred stock has been weakened by the recent Securities and Exchange Commission comment in the North Boston Lighting Case. North Boston is a subholding company in the New England Power Association system, with a noncallable $3 preferred stock which is considered high grade. The SEC, in considering the possible value of this preferred stock in dissolution, commented that on a normal market basis it might be worth as much as $75 a share (to return a 4 per cent yield). However, the stock could be retired at $50 in dissolution and "the record indicates that, for some time prior to filing of the original plan, the management has had under consideration the dissolution of NOBO because it is desirable to do so apart from the impact of § 11 of the act."

It is therefore concluded that the liquidation value of $50 "must be given considerable weight in evaluation of the preferred stockholder's claim." The review holds that the Public Service of New Jersey preferred stocks have a similar but weaker position and the NOBO decision suggests the possibility that they could be eliminated at less than the present market prices. New Jersey common may ultimately have a value above 40.

In the April 11th issue of PUBLIC UTILITIES FORTNIGHTLY (page 502-3) Josepthal & Co.'s adverse comment on Southwestern Public Service was quoted. A more favorable view of the company's stock is taken by Harold H. Young of Eastman, Dillon & Co., who feels that the stock offers good possibilities for long-term appreciation because of above average growth possibilities in the area served. Additional reasons are the excellent progress in placing the company on a sound financial basis, and in developing a well-integrated operating company system. The management has proved itself able and aggressive, in Mr. Young's opinion. Earnings on a tax-adjusted *pro forma* basis, including a contribution from construction work now in progress, are estimated at around $3 a share. (For the fiscal year ending August 31, 1946, $2.50 might be shown.) The dividend rate has been raised from $1 to $1.80.

Baker, Weeks & Harden has issued a lengthy analysis of United Gas Company common stock, the market value of which will play an important rôle in the retirement of Electric Power & Light preferred stock. The firm points out that the system is well integrated, owns huge reserves of natural gas, and has access to other large sources, and that the area it serves is growing more rapidly than the rest of the country. Oil and sulphur operations contribute to the consolidated results. The capitalization is conservative and hence the common stock "has the qualities demanded by institutional investors." The company's net current position is comfortable and with the substantial depletion and depreciation charges permits a relatively high proportion of earnings to be dispersed in dividends. The dividend rate now appears to be 80 cents, and 1946 earnings are estimated at around $1.

First Boston Corporation has issued a printed analysis of Utah Power & Light Company common stock. The article concludes that, with a yield of 5 per cent, a price-earnings ratio of only 11½ times earnings of $2.10 (before amortization), and with somewhat higher normal postwar earnings possibilities, "this stock possesses the safety factors which will place it in an increasingly important investment category, and its present price still reflects its recent history rather than the promising future which appears to lie ahead."

Holding Company Preferred Stocks

WHILE a few years ago the majority of holding company preferred stocks were considered highly speculative, in the past four years they have enjoyed a phenomenal "comeback," a number of issues having recovered over 100 points. Under changed market conditions, a number of them can now be paid off either at par and dividend arrears, or at the redemption price plus arrears, under pending integration plans. Examples are American Water Works, Central & South West Utilities, Commonwealth & Southern preferred, Northern States Power (Delaware) preferred, etc.

Where the full amount is not paid in cash, the value obtained in new securities may run even higher than the redemption price and arrears. For example, the utility staff of the SEC has proposed that holders of Northern States Power preferred stocks, who are willing to exchange for the common stock of the Minnesota operating company of the same name, should receive call price plus arrears, together with a bonus of 10 per cent for "going along with the plan"; those who prefer cash would not receive the bonus. A "when issued" market would be established in the new stock with SEC approval, so that there would be a practical market valuation on which to gauge the number of shares to be given the preferred. This is a new idea and one which would hardly have been considered by the commission several years ago, but it seems an excellent way of handling the valuation dilemma which has caused so much litigation and delay. Why not apply the same method to Consumers Power and other subsidiaries which Commonwealth & Southern may wish to liquidate, thus avoiding the necessity for token sales of stock as suggested in the management plan?

If this method of "when issued" markets should be adopted more generally, the commission would doubtless call for a prospectus on each new issue in advance of trading. In this connection *pro forma* earnings figures based on 1946 taxes would seem essential, together with a statement from the management regarding dividend policy. These two factors are all-important in arriving at a correct market valuation.

IN the list on page 634 are tabulated the principal utility holding company preferred stock issues in which there are current markets. (A few have been omitted because market prices were not readily obtainable.) Some of these issues have recently resumed dividends at the regular rate (American Power & Light, Electric Power & Light, Niagara Hudson first preferred); and others such as Northern States Power and New England Power Association have increased their payments to the regular rate.

Omitted from our list for lack of space are four issues of Public Service Corporation of New Jersey, which, of course, have always paid their regular dividends and are regarded more as operating company stocks. They present a special problem of retirement of noncallable issues. The question as to whether preferred stocks should receive par or redemption price in dissolution under a holding company integration plan has long been a vexing problem; the current trend is toward the redemption price. Another major problem as to whether noncallable issues should obtain a premium over their par value (usually the call price in dissolution) is expected to receive an answer when the SEC decides the American Light & Traction Case.

New North American Plan

THE North American Company recently filed a new integration plan but it seems unlikely that this can go into effect in the near future because of the opposition by President Van Wyck of Illinois Power Company (which several years ago brought suit for some $26,000,000 against North American).

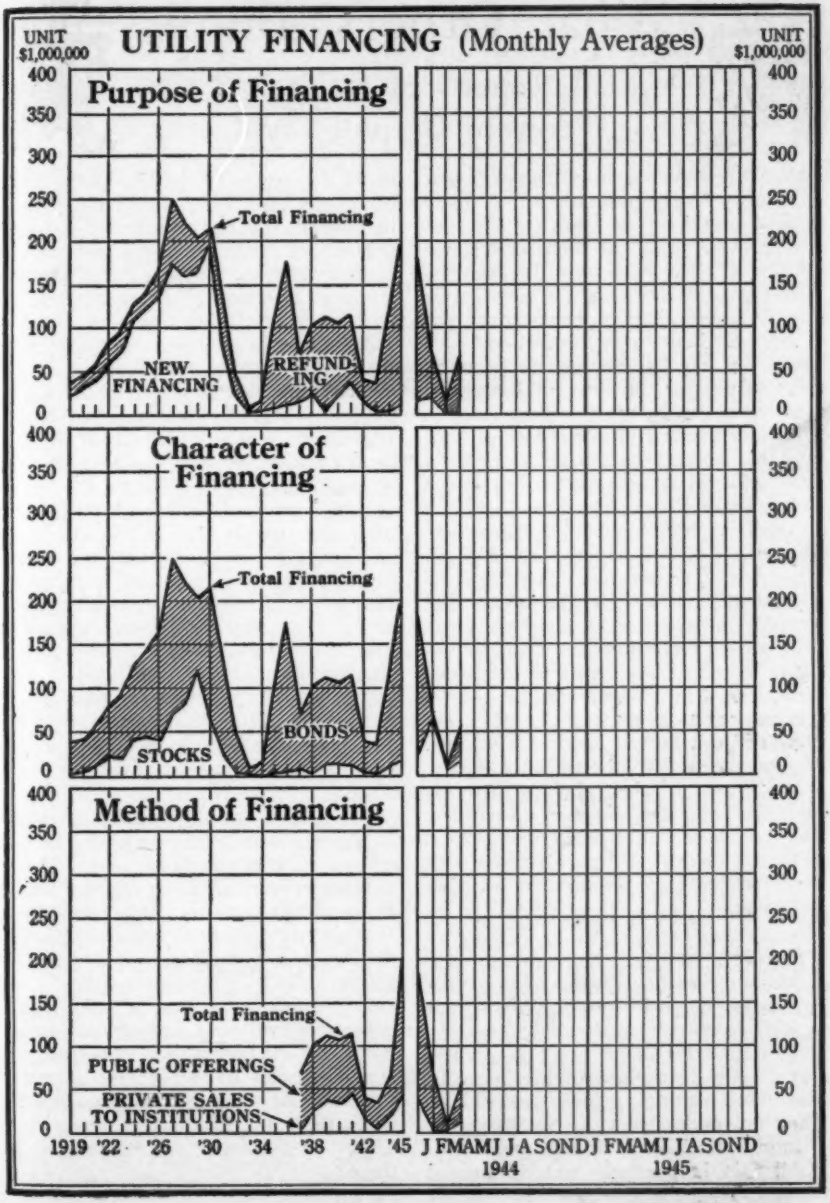
The old plan filed nearly three years ago suggested the creation of four regional holding companies and a liquidat-

ing company. Under the new plan there would be only one regional holding company, Missouri-Illinois Company, and a liquidating company to handle miscellaneous assets. Stockholders would receive warrants to buy, at not over $6, a divestment unit consisting of fractional shares of companies to be disposed of. Each share of North American would also receive one share of common stock of the Missouri-Illinois Company and a share of the new liquidating company. The divestment unit would consist of one-fifth share of Cleveland Electric, one-quarter share of Wisconsin Electric Power, one-fifth participating unit of Washington Railway & Electric (each unit represents one-fortieth of a share of common stock), and one-tenth share of St. Louis County Gas.

HOLDING COMPANY PREFERRED STOCKS

Where Traded		*Div. Rate*	*Approx. Price*	*Curr. Return*	*Call Price*	*Div. Arrears*
S	Amer. P. & L. $6 pfd.	$6.00	126	4.8%	115	$43.58
S	Amer. P. & L. $5 pfd.	5.00	115	4.4	110	36.31
C	Amer. Lt. & Trac. 6% pfd. ($25)	1.50	28	5.4	NC	—
S	Amer. Water Works $6 pfd.	6.00	106	5.7	110	—
O	Cent. & South West Util. $7 pfd.	—	195	—	120	99.00
C	Cities Service Co. $6 pfd.	—	153	—	112	80.00
C	Cities Service Co. 60¢ pref. B	—	14	—	10.60	8.30
C	Cities Service Co. $6 pref. BB	—	142	—	106	83.00
S	Col. G. & E. 6% pfd.	6.00	111	5.4	110	—
S	Col. G. & E. 5% pfd.	5.00	105	4.8	105	—
C	Col. G. & E. 5% pref.	5.00	101	5.0	100	—
S	Com. & Southern $6 pfd.	*	127	4.0	110	29.00
O	Cons. Elec. & Gas $6 pfd.	—	105	—	105	81.35
C	Elec. Bond & Sh. 6% pfd. ($70)	4.20	75	5.6	80	—
C	Elec. Bond & Sh. 5% pfd. ($70)	3.50	73	4.8	80	—
S	Elec. Pr. & Lt. $7 pfd.	7.00	170	4.1	110	89.72
S	Elec. Pr. & Lt. $6 pfd.	6.00	157	3.8	110	76.90
C	Elec. Pr. & Lt. $7 2nd pfd.	—	159	—	105	97.00
S	Eng. Pub. Serv. $5 pfd.	5.00	104	4.8	105	—
S	Eng. Pub. Serv. $5.50 pfd.	5.50	106	5.2	110	—
S	Eng. Pub. Serv. $6 pfd.	6.00	105	5.7	110	—
S	Federal Lt. & Tr. $6 pfd.	6.00	111	5.4	110	—
O	Mass. P. & L. $2 pfd.	2.00	29	6.9	50	2.95
O	Mass. Util. Associates 5% pfd. ($50)	2.50	45	5.6	NC	—
C	North Amer. L. & P. $6 pfd.	—	150	—	105	82.50
O	North Boston Ltg. 6% pfd. ($50)	3.00	54	5.6	NC	—
O	New England G. & E. $5.50 pfd.	—	120	—	105	55.00
C	New England Pwr. Asso. 6% pfd.	6.00	105	5.7	105	15.50
C	New England Pwr. Asso. $2 pfd.	2.00	35	5.7	37½	5.17
O	New England P. S. $7 P. L. pfd.	7.00	167	4.2	120	71.31
O	New England P. S. $6 P. L. pfd.	6.00	153	3.9	110	61.13
O	New England P. S. $7 pfd.	—	162	—	120	97.00
O	New England P. S. $6 pfd.	—	152	—	110	84.00
C	Niagara Hud. Pr. 5% 1st pfd.	5.00	120	4.2	107½	16.25
C	Niagara Hud. Pr. 5% 2nd pfd. A&B	—	119	—	107½	18.60
O	Nor. States Pr. (Del.) 7% pfd.	7.00	116	6.0	110	10.06
O	Nor. States Pr. 6% pfd.	6.00	111	5.4	107½	8.63
O	Portland E. P. 7% prior pref.	—	163	—	105	92.75
O	R. I. P. S. $2 pfd. ($27.50)	2.00	36	5.6	33	—
S	Stand. G. & E. $7 prior pref.	—	147	—	115	85.40
S	Stand. G. & E. $6 prior pref.	—	132	—	110	73.20
S	Stand. G. & E. $4 pfd.	—	52	—	NC	52.33
C	Standard P. & L. $7 pfd.	—	150	—	110	84.81
S	West Penn Elec. 7% pfd.	7.00	119	5.9	115	—
S	West Penn Elec. 6% pfd.	6.00	111	5.4	115	—
S	West Penn Elec. $7 class A	7.00	115	6.1	115	—

S—Stock Exchange. C—Curb. O—Over counter. * $3.25 paid in 1946, $5 in 1945; yield based on latter rate.


UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
Total Financing
STOCKS
BONDS
Method of Financing
Total Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
400
350
300
250
200
150
100
50
0
1919 '22 '26 '30 '34 '38 '42 '45
J FMAMJ JASONDJ FMAMJ JASOND
1944
1945

What Others Think

Annual Reports of Utilities Trend Toward Graphic Style

AGAIN it is the season of the year when utility companies report to their stockholders upon the affairs of the preceding year. Many of these annual reports for 1945 have already come to hand from all sections of the country. A glance through their pages discloses that in most of them much thought and care have been devoted to their preparation so as to present the story of the year's business in readily understandable form.

An increasing tendency is noticeable to bind the report in an attractive cover—some with an artistic design in color—and to make liberal use throughout the pages of graphic charts and tables explanatory of the accompanying text. Also, in a number of reports are to be found illustrations, not only of the companies' physical properties and a variety of operating scenes, but pictures of manufacturing processes in the plants of industrial customers. Rural electrification, too, is given more attention than heretofore.

All of these factors suggest an awareness on the part of the utility company managements of the value to their investor and public relations, in telling their story so that it will be readily understood by those who may not be too familiar with the terms customarily used in financial statements.

INVESTORS in our American corporations represent all walks of life. Surveys have shown that stockholders want reports in simple, nontechnical words. They want facts about the past activities and the future outlook of the business. They like pictures, graphs, and charts. They are interested to know the background of the men in the management.

All this is perfectly natural human interest. That it is so recognized by many utility managements is indicated as one turns the pages of these reports. The utility business, being of such importance in our economy, has a factual story to tell which goes far beyond the figures in the earnings statement and balance sheet, essential as they may be to the complete report. It is gratifying to note how many companies sense the necessity to present their story in attractive form so it will make interesting reading to many people.

In these days when there is increasing activity by groups which favor government competition with business, there is very real need for education of the American people regarding *free enterprise,* and what it means to each citizen to have it preserved. These business-managed, tax-paying companies in the utility industry, whose annual reports are characteristic of the trend mentioned, are making a substantial contribution to a clearer understanding of these matters. This is to be noted especially where reference is made to the competition of public power projects, and the fallacies disclosed in the views advanced by their advocates.

As evidencing the attention being given to the make-up of the annual report, there has been issued by *Ebasco Services, Inc.,* for the special use of its client companies, a 60-page pamphlet—"Reminders for Utility Annual Reports." Beginning with a reference to "What the Surveys Show" as to stockholders' preferences with respect to annual reports, there follows brief, pertinent comment, with reproduction of actual pages from annual reports of utility and industrial concerns, which serves to illustrate the particular subject heading.

Among the subjects and comments are these:

Where the Money Went—Various ways to show this in graphic form.

A "What It Takes" (to supply electricity) section in the annual report can do much to bring ELECTRICITY and the organization it comes from into the public esteem which is deserved.

Electricity on the Farm—Certainly this topic deserves a prominent section in the annual report if for no other reason than to let people know that government agencies are not "doing it all."

Tell what electricity does in running the machines in factories.

History of the Company—Story of early days and company's growth and progress hand in hand with the territory served.

Brief Biographies of Management—Photographs.

Old Timers.

Cost of Living Up—Cost of Electricity Down.

Territory Served—Map.

Plans for the Future.

Investors—by Groups.

Technical Language Is Taboo.

Explaining the American Business System.

The illustrations in this pamphlet are a practical support to the text. They are reproduced from the actual reports of nationally known concerns, which have evidently considered it advantageous to inform their own stockholders about these various phases of their business. The publication of this pamphlet of "reminders," as a comprehensive compendium of practical suggestions on the make-up of utility annual reports, indicates the importance attached to this particular phase of the utility business.

THE extracts which follow from some of the current annual reports will indicate how various utility companies tell their story to their stockholders. Selections have been confined to certain topics which may serve to illustrate the variety of matters touched upon and the manner of presenting them.

Northern States Power Company, right at the beginning of its report, refers to the work of the management as follows:

> The direct supervision of the work of the system is taken care of by its officers. Matters concerning the general policy, however, are principally the responsibility of the board of directors of Northern States Power Company (Minnesota). It is of vital importance, therefore, that they be men of integrity and intelligence. If the board is well selected, the officers have at their service the advice of directors with a vast fund of business experience in many fields. The responsibilities are great. The fees paid for attendance at directors' meetings are moderate for such men. Analyses of earnings and other statements and study of special situations are necessary. In order to undertake these tasks, directors must be actuated by high ideals of responsibility to the public, recognizing the importance of our system not only to its stockholders, but to the development of the territory served.

Its stockholders represent many diverse groups of people. The report states:

> . . . The stockholders of the company constitute a typical cross section of thrifty American life. The list of stockholders includes businessmen and women, doctors, lawyers, teachers, housewives, mechanics, farmers, laborers, churches, colleges, insurance companies, and investment trusts. The average holding of preferred shares has increased from 12.8 shares in 1944 to 13.45 shares as of December 31, 1945. A considerable number of stockholders have held their stock for more than twenty years. Through long association with them, through good years and bad, the management is fully aware of its responsibility to stockholders.

As to taxes, this illuminating comment is made:

> For the year under review, total system taxes, without benefit of the credit referred to . . ., amounted to:
>
> 31.18 cents out of every dollar of revenue
> 1.6 times total operating payroll
> 1.88 times total interest and dividends paid by the system
>
> | | |
> |---|---|
> | Total taxes ..... | $16,591,158.41 |
> | Total electric residential revenue ..... | $16,714,913.82 |
>
> The amounts paid to the communities served in the form of real estate, personal property, and other taxes make the system important to those communities aside from the value of the services rendered.

ALSO, the importance of employee and labor relations is discussed, with this opening statement:

> If an annual report deals only with money, machines, and property of the organization, it tells only part of the story. The people connected with it are vital to the success of the organization and we believe this company has a right to be proud of its system employees. The interests of management and employees are mutual and best results can

only be secured where confidence in each other exists. It is management's responsibility to earn the confidence of employees and that is our policy. As a result of this procedure, stability of employment, and consequent length of average employment, there is something akin to a family feeling throughout the organization.

Duquesne Light Company, in a comment upon its operating accomplishments during the war, makes this pertinent observation:

> The war job, which required expenditures by the company of many millions of dollars, was done within the framework of the free enterprise system, without government aid or subsidy, and in accordance with the free democratic processes by which this nation has grown great.

And at the close of the president's letter is this thoughtful statement:

> It is the privilege [of this company] to supply essential public services. The ability to discharge satisfactorily the resultant obligations to the public, to the employees, and to those who have provided the funds which motivate the business, requires the recognition by each of the appropriate interests that are involved. Each is important, and each is dependent upon the others. A rightful balance among all three must prevail to insure adequacy, continuity, and dependability of electric and steam service at fair and reasonable rates.

PACIFIC GAS AND ELECTRIC COMPANY, in the course of its general remarks, makes this statement:

> We continue of the opinion that under normal conditions stability can best be achieved by striving for expanding markets and increased production, with unit selling prices at the lowest levels consistent with the maintenance of satisfactory service, fair wages to employees, financial soundness, and a reasonable return to investors.

Reference is made to atomic energy in these words:

> . . . In recent months the feasibility of harnessing atomic energy to industrial use has stimulated the public imagination, and provoked speculation as to whether peaceful applications of this energy may in time profoundly affect the electric power industry. . . .
>
> A vast amount of research and experimentation remain to be done before its practical value for business purposes may be determined. Such research may take several years. There is, however, good authority for believing that if atomic power can ever be economically justified, its production may be accomplished only in very large plants which would supplement rather than supplant existing sources of electrical supply. It may be pointed out also that the expense of power generation is a relatively small fraction of the cost of supplying electric service.

THE tax exemption of government-owned utilities is touched upon as follows:

> The constant withdrawal of more and more property and income from the reach of taxation is a subject which should receive legislative attention. No valid reason now exists for continuing this unfair and discriminatory practice. Those served by publicly owned utilities should not escape a fair share of the higher burden of taxation which now appears to be permanently associated with our economy. The question is not primarily one of public as against private ownership, but rather one of equitably distributing the tax burden.
>
> If government ownership cannot compete with investor capital without the benefit of a subsidy in the form of tax exemption, it has no place in a society founded on the private enterprise system.

Service of electricity to farms and plans for extension of this rural service are noted:

> It is estimated that we now supply electric service to approximately 76,000, or more than 90 per cent, of the farms in our service area in northern and central California. These 76,000 farms used in excess of 1,000,000,000 kilowatt hours of electricity in 1945, including deliveries of almost 900,000,000 kilowatt hours under our agricultural power schedules.
>
> Under the company's liberalized line extension policy, electric lines were extended into a number of rural areas. This program was accelerated in the latter part of the year. Our plans call for the construction of many miles of additional lines in 1946.

Among various matters relating to employees and their interests, this mention is made of the activities of the Pacific Service Employees Association:

> . . . This association, in operation for twenty-nine years, is a voluntary organization conducted entirely by its members for beneficial, educational, social, and recreational purposes. At the close of the year its membership numbered 8,379, of whom 956 were still in military service.

The association's major activity is its educational program, which is available to all employees of the company. In 1945 the association sponsored 448 lectures which attracted an aggregate attendance of more than 18,000 employees, and granted 1,544 certificates for successful completion of educational courses.

Also, this reference is made to a new supervisory training program:

Realizing that high standards of employee efficiency and morale can best be attained through a trained supervisory force, the company during 1945 engaged in a comprehensive supervisory training program especially devoted to the relationship of the supervisor to the worker. The course was taken by 1,800 employees, including every supervisor from the first level of supervision to top management. The program will be continued in order to retain and add to the good results already achieved.

THE *Cleveland Electric Illuminating Company* calls attention thus to the contrasting conditions in its earnings position from prewar to postwar times:

Over the 7-year span from the first day of 1939 to the last of 1945, the company increased its plant and property $31,900,000, much of this expansion being made to supply power for Victory.

Continuing the comparison between 1945 and 1939, total revenues in 1945 were 53 per cent greater, but total operating expenses, including provision for postwar adjustments, were 85 per cent greater. Contributing to this rise in operating expenses were the following: wages and salaries to operating employees, up 70 per cent; fuel, materials, supplies, and other expenses, up 133 per cent; and taxes to Federal, state, and local government, up 33 per cent.

The $3,398 average pay per employee for 1945 was 74.6 per cent higher than for 1939; and the average cost of coal, $4.59 per ton, was 50 per cent higher.

Earnings for stockholders in 1945, without giving effect to revenues impounded or in suspense for the year, were $1,800,000 less than for 1939, a decrease of 20 per cent.

This utility company, one among several which are engaged in fostering increased industrial development in the territory they serve, has this to say about its program:

The extent of the wartime expansion of industry in this area was due in important measure to this company's industrial development campaign, plus the fact that the company was constantly in a position to provide plenty of power at rates among the lowest in the nation. . . .

While the company's campaign is thoroughly organized as an integrated sales operation, the large measure of success which it has gained is due to coöperation it has been accorded by, and has given to, railroads, banks, consulting engineers, real estate firms, chambers of commerce, municipal officials, governmental agencies, and others.

By extensive national advertising the company has made the Cleveland-northeast Ohio area known as "The Best Location in the Nation" for production, distribution, and management headquarters. Magazine and newspaper advertising is supported by direct mail, brochures, personal selling, and a confidential and complete location engineering service which is furnished free to industrial concerns.

This expansion benefits everyone in the Cleveland-northeast Ohio area directly or indirectly, for here the products, payrolls, and profits produced by industry constitute the foundation of all prosperity, culture, and progress.

And, under the heading "Looking Forward," the reader's attention is directed to the anomalous and inequitable situation with reference to rates and taxes:

To enable the self-supporting, tax-paying companies in the electric light and power business—including this company—to continue to provide in peace, as they did in war, for all demands for service in full and on time, there must be just rate regulation and fair taxation. These are fundamental to preservation of the sound financial structure together with the record of earnings necessary to attract additional investment to provide increased facilities as required for service to the public.

It plainly is contrary to sound principles of economics and democratic government that, with costs persistently rising in ratio to revenues, rates should be reduced so severely that it is impossible to earn a fair return; or that taxes collected from self-supporting companies should be used to help support competing, government-owned electric systems which are largely tax exempt and, in addition, are subsidized out of tax revenues collected from industry and its customers.

THE *Connecticut Light & Power Company* also has something to say on this "tax avoidance" question. Under the heading "Fair Competition," its stockholders are told:

While we, in common with all other private

business, welcome the reduction in our extremely high taxes as the result of the recently enacted Federal tax law, we, nevertheless, regret that the TVA and other Federal or municipally owned agencies are still not required to pay any taxes in support of the Federal government. In addition, many of these agencies pay inconsequential interest rates and are favored by special privileges, such as preferential freight rates, free mailing and publicity, and freedom from the regulation of both Federal and state agencies. These and other subsidies and preferences are rarely discussed factors in the widely publicized lower operating costs and rates of these agencies as compared with those of business-managed companies.

As a result of this discrimination, the customers in those parts of the country where the publicly owned agencies operate are not paying their fair share of taxes which, of course, means that in other parts of the country the citizens must pay more than their fair share. It is to be hoped that Congress will recognize the situation and take effective steps to correct the evil.

As to atomic energy, this informative comment is made:

While no one can, at this time, positively forecast when or if the new source of energy will be applied to industry and the generation of electricity, it is evident that if atomic energy is finally harnessed at a reasonable production cost, it will serve our industry only as a cheaper substitute for coal.

Electricity, whatever the source of energy for its generation, would still have to be transmitted and distributed for use in factories, stores, and homes. It is interesting to note that the transmission and distribution facilities of the nation's electric companies account for two-thirds of their total investment. This huge investment would not, of course, be affected by the substitution of atomic energy for coal in the generation of electricity.

The electric industry will follow with interest and give every encouragement to the future development of atomic energy for practical, peacetime uses.

Looking to the future, a confident outlook is shown:

Our extensive, long-range expansion and improvement program, which is now under way, is an expression of confidence by our company in the future of Connecticut. We believe that this sizable construction program will encourage industrial expansion and the development of new industry and business in our state. The largest possible amount of the money to be expended on the program will be spent for materials and supplies made and sold in Connecticut. It has always been our policy to do our full share in maintaining and encouraging full employment and prosperity throughout the widespread area we serve.

This company's report closes with this paragraph upon free enterprise and government competition:

The utility industry has made a highly important contribution to public service and the national welfare by providing increasingly good service at a constantly decreasing cost to the public. This performance is a striking example of the way our system of free enterprise works. The industry can maintain and improve that high standard of performance if given fair opportunity. It cannot be maintained or improved if discriminatory government competition is permitted to expand, stifling initiative and discouraging investment of capital.

CONSUMERS POWER COMPANY (Michigan) devotes considerable space to farm electrification:

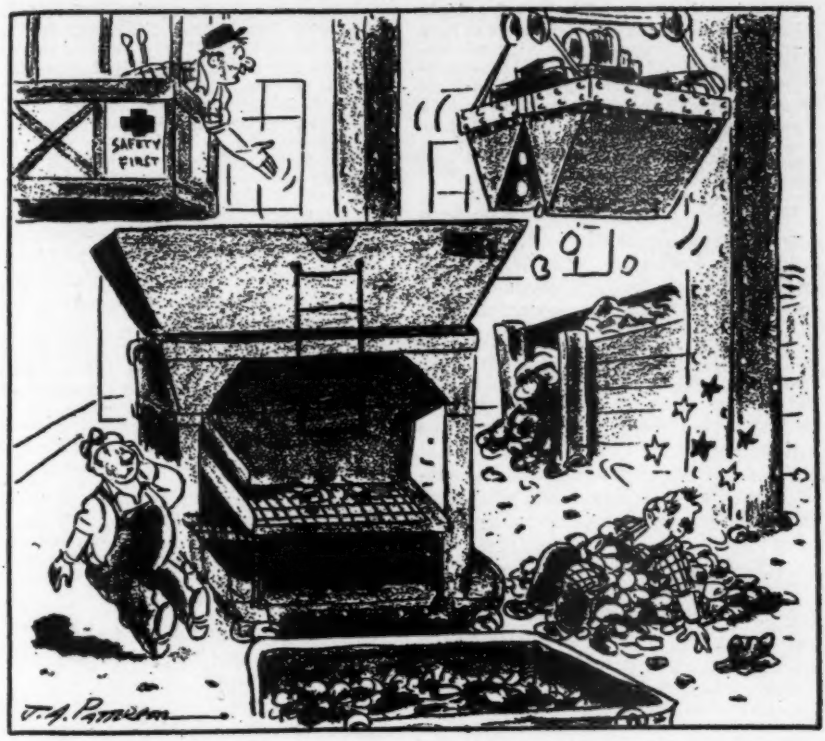
At the present time, electric service from existing rural lines is available to 92 per cent of all farms in the company's 50-county farm service area, and 86 per cent of all farms now actually have service. This rural system embraces a total of 20,008 miles of lines, serving 132,919 rural customers, including 82,063 farms.

This rural work of the company extends back to the pioneering lines of 1924 and 1926. Available reports indicate that this company not only serves more farms than any other electric utility, but also serves one of the largest contiguous farm territories in the country.

Our company's rural lines are an important force in the economic and sociological development of Michigan. They make farm work easier and more profitable. They bring to the farm home the labor-saving conveniences that city homes enjoy. They help spread radio's news, education, and entertainment. They broaden the usefulness of public buildings. And they make the rural areas and small communities increasingly attractive for the establishment of stores, service stations, and small industries.

Electric uses on the farm continue to grow, the average consumption per farm for 1945 having increased to 2,178 kilowatt hours, a gain of 226 kilowatt hours over 1944.

This service was supplied at an average of 2.52 cents per kilowatt hour. The availability of ample electric capacity, with facilities adequately and continuously maintained, both important factors in farm operation, and at rates which encourage volume use at progressively lower prices, has



"YOU'LL HAVE TO PARDON ME, MR. HAPGOOD—I'M ALL THUMBS TODAY"

brought new opportunities to Michigan farmers.

Farm residential service is supplied at the same standard rates in effect in urban communities, which rates provide substantially cheaper electricity than those of any of the governmentally sponsored rural projects in this area, despite tax exemptions with which such projects are favored.

The company's farm service specialists found particular fields of usefulness to customers during the war period, when new equipment was generally unavailable and repair materials scarce, in working with farmers in devising "homemade" equipment and methods for utilizing electric service. The necessity for adequate wiring to allow for the connection of additional equipment and greater use of old and new equipment is being actively stressed.

CONSOLIDATED GAS ELECTRIC LIGHT & POWER COMPANY OF BALTIMORE, under its "General Comments," states:

The operation of a large utility supplying electricity and gas is intimately geared to residential and industrial development within the area which it serves. It must plan for and meet the demands of customers during periods of orderly growth in peacetime, and likewise be prepared for sudden increases in load when new industrial plants are located in its territory or major expansions of existing plants occur.

Utility companies are also called upon during periods of abnormal expansion—such as the great World War from which our country and its Allies have emerged victorious—to render services which meet the pressing demands of an emergency.

It is a matter of deep personal satisfaction in all ranks of our organization that our company was able to supply promptly and continuously the greatly expanded volumes of electricity and gas without which it

would have been impossible for industries in Baltimore and its surrounding areas to have made their contributions to the nation's stupendous war production effort. It may properly be said that the company's achievement in this respect was due to careful and timely planning, conscientious acceptance of the responsibilities which accompany its form of public service, and loyal and capable personnel.

Wisconsin Public Service Company departs from the usual form of annual reports, in combining, with its financial and other corporate data, alternate pages featuring the "story of agriculture" in the territory served by the company. These pages, in text and pictures, touch upon dairying, poultry and meats, and the various types of crops, and provide an instructive commentary on the farm activities.

As a member of the National Association of Electric Companies, this company's report makes this interesting statement:

In 1945 we joined the National Association of Electric Companies, along with many other utility companies in the country. This association, located in Washington, D. C., now represents the electric industry in our nation's capital. It was organized to supply information about the utility industry to persons or organizations seeking it, and to present corrective and enlightening facts through any source or forum when desirable. It will endeavor to keep the public and its lawmaking representatives correctly informed on controversial and statistical subjects concerning our interest, and that of the public, in sustaining business management of the electric industry. It will promote coöperation with governmental agencies and departments dealing with utility companies and with the supply of electric light and power.

Organizations favoring government ownership of utilities, and opposed to investor ownership, have long had representation in Washington, as have most important industries and all the large labor bodies and farmers' groups. The NAEC now provides the electric industry with similar representation.

And the report closes with this observation regarding future outlook:

Summarizing future prospects, it appears that business, employment, and general prosperity for the whole American people will be at high levels provided labor, industry, agriculture, and government all show patience, tolerance, and understanding and settle in the near future their differences now so much in evidence. Hard work—production—made our nation what it is. Full production is the only foundation on which to build and rebuild our national economy after the most destructive war in history. When this full production is realized, our company will participate fully in the nation's prosperity.

THE *North American Company* directs attention to the small gain in net earnings contrasted with the large increase in taxes paid. Its report says:

Although the North American system spent approximately $169,000,000 for the expansion of facilities between 1939 and 1945, largely to provide power for the war effort, and although the physical volume of our business almost doubled during the period, earnings showed little gain during the war.

Combined net earnings available for the common stocks of our four groups of operating utilities for 1945 were $18,725,000, compared with $18,531,000 for 1939, an increase of only one per cent. Over the same period, the tax bill of these companies nearly doubled, totaling $37,033,000 for 1945, compared with $19,122,000 for 1939.

And, regarding the "tax avoidance" of public power projects, this statement is made:

Removal of the so-called excess profits tax in 1946 has only modified in some degree but has not corrected the inequity of the privilege of tax exemption now enjoyed by municipal and Federal power operations. We continue to urge that legislation be enacted to remedy this uneconomic and unfair subsidy to government-owned plants which increases the burden on all taxpayers.

The *Detroit Edison Company*, after reviewing the many phases of its business affairs, at the close of its report makes this thoughtful observation under the heading "Looking Forward":

The trend is toward a sharp increase in the use of electricity. Ours is still a young and growing industry, and nothing now in sight can challenge its place. Atomic energy may sometime be used in the production of electricity, but we believe it is fairly remote. Incidentally, our research department made a "paper" study of Uranium 235 and its potentialities prior to 1940 when many of the science and research laboratories of the country were giving atomic energy and U-235 the first intensive look. From all we know now, atomic energy would be used as

a source of heat in some special type of boiler, much as we now use coal. But even if we got atomic energy for nothing, our cost of serving the residence customer could not be much reduced because we burn less than a ton of coal a year to serve the average home. On the other hand, fuel is an important element of the cost of serving large commercial and industrial customers. If our present belief is correct, the rest of the electrical system—turbo-generators, transmission, motors, and other customer appliances—would not be changed as a result of the use of atomic energy. If and when atomic energy is applied to power production we hope to be among the first to take advantage of it.

IT is of special interest to note that among the annual reports which have come to hand are many which, aside from the comprehensive factual data presented, are so attractive in appearance, and in the arrangement of illustrations and graphic charts, that they are worthy of preservation.

The artistic character of the make-up of some of them, in fact, suggests that the managements of the companies concerned so prepared their reports as to induce the recipient to desire not only to preserve it but, because of the very attractiveness with which the facts are presented, to show it to others.

This seems like good psychology, for the more readers there are of such instructive reports of business-managed utility companies, the better informed will the general public become regarding this important segment of investor-owned free enterprise in this country.

—R. S. C.

Local Research Facilities Now Available To South's Utilities

AT the March meeting, in Birmingham, Alabama, the members of the engineering and operating section of the Southeastern Electric Exchange were told by Thomas W. Martin (president, Alabama Power Company) of the plans and outlook for the Southern Research Institute.

This institute, organized in 1940, is located in Birmingham, as a center for scientific research, especially in respect to the profitable use of the natural resources of the South. Mr. Martin, as chairman of its board—upon which serve leading men of affairs of the South—began his remarks with this comment upon the importance of research to industry:

> The ideas of research and progress as synonymous concepts have been established in the minds of those who operate almost every kind of business enterprise. From these ideas are developed many of the products, materials, and devices which affect the daily lives of all of us. . . .
>
> New industries and the advancement of old depend first of all on increasing the sum of human knowledge which is the function of scientific research. But they depend even more on the new application of existing knowledge.
>
> The amount of scientific knowledge already available which ought to be applied to an industry and has not yet been applied is almost always far greater than the new contributions to human knowledge which industrial research can hope to make.

SOUTHERN RESEARCH INSTITUTE, Mr. Martin stated, has modern facilities, which include chemical, metallurgical, and physical testing laboratories, also for studies in biochemistry, foods, and nutrition, and it has established a division for engineering research. As to procedure in carrying on its work, he said:

> Capital funds will be used for buildings and equipment and funds for sponsored research will pay salaries and operating expenses. Research will be conducted under the fellowship plan whereby a project is assigned to one or more members of the staff. The sponsor deposits with the institute a sum of money from which salaries, special equipment, and other expenses of the project are paid, including a stipulated amount for overhead expenses of the institute. The usual term of contract is for at least one year, although a certain amount of work may be done on a month-to-month basis. Patents that result from sponsored research will be assigned to the sponsor, except in so far as they include earlier contributions from the insti-

tute's own research, and, although research will be conducted on a confidential basis, the institute will encourage sponsors to authorize publication after agreed intervals of time. Only one sponsor in each field of interest, as defined in the contract, will have access to the institute's services at any one time, thus avoiding conflicts in determining the rights of the sponsor. . . .

Although the Southern Research Institute was established to provide new research facilities in the South, the acceptance of sponsored projects will not be limited by any specific geographical considerations. Association research projects on basic, industry-wide problems are particularly invited.

The director of the institute, Dr. W. A. Lazier, who distinguished himself in industrial research before coming South, has drawn around him over a score of able young scientists. They are at work on sponsored research projects in such varied fields as cotton, cottonseed products, tobacco, peanuts, citrus products, penicillin, mechanics, and other materials of various kinds.

Before the end of the year, fifty scientists will probably be at work, and the number will undoubtedly continue to grow until there will probably be two hundred or more.

THEN, sounding a note which seems to be characteristic of the spirit of pioneer effort and free enterprise in this country, the speaker said:

What of the future of science? Thoughtful men everywhere agree that it is the "Endless Frontier." The South is rich in the spirit of the pioneering tradition. It can be land with an overexpanding horizon—the endless frontier, with science as its guide. Expanding as never before, it is fully capable of bringing forth new goods, new services, new industries, and of doing much to improve living standards and provide the jobs we will need at good wages for the returned soldier and the thousands who have been trained in war work.

In closing, Mr. Martin commented upon the support given this enterprise by utility companies. He stated that the total amount of contributions from public utilities of the Southeast, including the railroads, is in excess of a quarter of a million dollars. And to this impressive sum should be added, he said, very substantial sums from several of the manufacturers of electric equipment.

As an indication of the practical use being made by utilities of the facilities of the institute, the Southeastern Electric Exchange, for its member companies, is sponsoring research to develop use of the heat pump for winter heating and summer cooling from the same equipment. (See page 513, April 11th issue, PUBLIC UTILITIES FORTNIGHTLY.)

New York Subways Need 10-cent Fare

IN an address recently to the members of the Women's City Club of New York, as reported in the *Herald Tribune*, Charles P. Gross, chairman of that city's board of transportation, made some revealing statements about the subway situation. Speaking on the subject, "Our Ailing Subways — Suggested Remedies," Mr. Gross, former Major General in charge of Army transportation, said that the ills of the transit system are "glaringly apparent." After four years of war, "it is quite natural that the system is in great need of modernization and rehabilitation." He continued:

Our equipment is old. Some of our subway cars are forty years old; our newest trolleys, nine, and some as old as fifty years; many busses should have been retired years ago.

On top of this are other ills—noisy, poorly lit stations and cars; we could have better ventilation, and the subway could smell sweeter by far than it does. The litter almost makes it an abomination.

The modernization plans of the board of transportation include city-owned surface lines as well as the subways. In a recent round-table radio talk, Chairman Gross stated that "as fast as it can be physically done, and to the extent that necessary funds are made available, antiquated equipment will be replaced by the newest and finest of subway cars, streetcars, trackless trolley coaches, gas and Diesel busses."

As to the subway fare, in his opinion "nothing less than a 10-cent fare should be considered if a self-sustaining subway is considered."

The March of Events

Atomic Energy Bill Reported

A MEASURE to provide for control of domestic use and development of atomic energy (S 1717) was reported to the Senate recently from the Senate Special Atomic Energy Committee, headed by Senator McMahon.

This measure would create a 5-member, full-time, civilian Atomic Energy Commission. The commission would have a general manager and divisions of research, production, engineering, and military application.

A 9-member, civilian general advisory committee would be set up to advise the commission on scientific and technical matters. This group would meet at least four times each year.

Also, a military liaison committee would be appointed by the Secretaries of War and Navy to consult with the commission on matters regarding military applications of atomic energy. Acting upon recommendations of this liaison committee, the Secretaries of War and Navy might protest to the President on any action of the Atomic Energy Commission within their scope of interest. The President would make the final decision.

The bill would provide for: (1) Federal assistance to private and public institutions in atomic energy research; (2) government monopoly of production of fissionable materials; (3) government control of source materials by licensing procedures; (4) research as to military applications of atomic energy; (5) research as to uses and applications of atomic energy and licensing of atomic energy devices; (6) control of information; (7) government control of new inventions and prohibition of normal patent procedures; (8) a joint congressional committee on atomic energy; and (9) penalties for violation of bill's provisions.

FPC Authorizes Extensions

THE Federal Power Commission recently granted authority to the Kansas-Nebraska Natural Gas Company, Phillipsburg, Kansas, to construct, acquire, and operate gas transportation facilities in Kansas and Nebraska at an estimated cost of $1,575,000. According to the company's application, the construction work would be commenced immediately.

The program authorized will enable the applicant to obtain adequate volumes of gas from the Hugoton field and discontinue the receipt of gas from the Kansas Power & Light Company. It also will provide greater delivery capacity to meet increased demands of the company's present customers and also to supply new markets in Kansas and Nebraska.

Westinghouse Reports

THE Westinghouse Electric Corporation recently announced it was negotiating an $80,000,000 bank loan to meet its financial obligations and enable it to go ahead with a $58,000,000 expansion and improvement program in 1946, despite the 93-day-old strike of the UE-CIO Union.

Gwilym A. Price, Westinghouse president, made the announcement in a statement released at the annual meeting of stockholders which was held April 17th at the company's East Pittsburgh works. Discussing the strike and the $30,000,000 wage increase offer made by Westinghouse in an effort to end the walkout, Mr. Price stated that, for each working day of the strike, Westinghouse employees who are on strike have lost wages amounting to $642,000, or a total of more than $42,000,000. "We regret deeply that this $42,000,000 has been lost to them forever. Meanwhile, our company, its customers, and the nation have lost $100,000,000 worth of production of badly needed electrical equipment and appliances."

Mr. Price emphasized that the company's wage increase offer was so liberal that it gives Westinghouse concern as to how manufacturing efficiency can be improved enough to pay the additional $30,000,000 annually which such an increase in wages will cost—an amount that is $4,000,000 more than the company's net income in 1945.

While it was impossible to give a complete report on the company's business during the first quarter of 1946, during most of which time the company's plants were idled by the strike, Mr. Price estimated that net sales billed during January, February, and March averaged about $10,000,000 a month.

Plan Filed with SEC

A GROUP of common stockholders of Northern States Power Company (Delaware), composed of Lehman Brothers, Riter & Co., Lehman Corporation, and the Overseas Securities Company, Inc., representing 18.44 per cent of the company's class A common stock, submitted a plan to the Securities and Exchange Commission on April 22nd providing for the distribution of Northern States' holdings and its eventual dissolution.

The commission already has approved a dis-

solution plan of the Delaware company, filed in March, 1944. The commission, however, was granted an adjournment of a hearing for enforcement of the approved plan, now before the Federal District Court in Minneapolis, for the purpose of considering new plans.

Legal Fees Allowed

PAYMENTS of $1,160,889 to the seventy-two attorneys who participated in the reorganization of Associated Gas & Electric Company were approved last month by Judge Vincent L. Leibell, in United States District Court in an order nearly halving the total amounts applied for.

Judge Leibell said, in a 151-page opinion, that "amounts requested by the various applicants are, in a few instances, fantastic, and in some instances grossly excessive," but added that applications of the majority of the law firms "had genuine and substantial merit." His order also reduced the amount of expenses requested, allowing $91,445 of the $101,744 asked.

Among those involved in the proceeding, the amounts asked, and the sums granted, were Lewis M. Dabney, Jr., $53,750, $26,500; Willard L. Thorp, $85,500, $34,500; Allen E. Thorp, $74,000, $45,500; O. John Roggs, $24,575, $24,500; Ralph M. Arkush, Bonney & Bonney, and R. Keith Kane, $192,500, $109,000; Hays, Wolf, Schwabacher, Sklar & Epstein, $140,000, $72,500; Scribner & Miller, $160,000, $98,500; and Glass & Lynch, $125,000, $55,000.

New Mixed Gas Studied

EXTENSION of recently completed mixed gas research studies on interchangeability of other fuel gases with natural gases to include manufactured gas as base load has been undertaken by the American Gas Association Testing Laboratories. This project is sponsored by the gas production research committee of which P. T. Dashiell, vice president in charge of production, Philadelphia Gas Works Company, is chairman, and Edwin L. Hall is secretary-coördinator. It is under the supervision of a new technical advisory committee on mixed gas research.

The first meeting of the new advisory committee was held at the laboratories in Cleveland on April 2nd. J. A. Anthes of Brooklyn Union Gas Company was elected chairman.

A desk study and survey trip as a preliminary phase of the investigation was approved by the committee. This will include consideration of empirical interchange indices for base natural gases, presented in Bulletin No. 36, "Interchangeability of Other Fuel Gases with Natural Gases," for possible application to base manufactured gases.

As further preliminary, a survey of representative manufactured gas companies to secure firsthand information on actual operating problems encountered by them in mixing gases was approved. Procedures for producing and mixing gases, methods of gas analysis, types of critical appliances in general use, and practices followed in adjustment of appliances will be studied.

As correct gas analyses are essential in obtaining reliable interchangeability indices, much attention will be directed during the investigation to methods and techniques used in gas analyses. Consideration also will be given to the possible use of a test burner or other means for obtaining factors used in the interchangeability equations without necessity of knowing accurately the complete gas analyses.

Members of the new technical advisory group besides Mr. Anthes are: W. E. Churchill, Boston Consolidated Gas Company; W. R. Fraser, Michigan Consolidated Gas Company, Detroit; F. E. Vandaveer, East Ohio Gas Company, Cleveland; and C. C. Winterstein, Philadelphia Gas Works Company.

Returns from a recent survey of 125 gas utility companies producing manufactured and mixed gas, constituting 43 per cent of that portion of the gas industry, showed that 44 companies, serving more than 1,600,000 customers, could not continue normal gas service after April 30th, unless furnished additional bituminous coal or coke from stocks throughout the nation which were seriously limited by the strike of the United Mine Workers of America. The survey was made by the American Gas Association just before the shutdown of the bituminous coal mines on March 31st.

Union Bars Communists

THE newly organized Utility Workers Union of America, CIO, which held its first convention in Atlantic City, New Jersey, last month, has barred Communists from holding membership in the union, it was disclosed recently.

A clause in the union's constitution provides for the expulsion of any member who joins the Communist, Nazi, or Fascist parties and permanently prohibits those who formerly belonged to any of these parties from holding office in the union.

William J. Pachler, secretary-treasurer of the union, said the entire constitution, including the anti-Communist clause, had been reviewed by Allan S. Haywood, national director of organization for the CIO, before its submission to the delegates at Atlantic City. Only 6 of the 377 convention delegates voted against the clause, Mr. Pachler reported, and these were from California locals, in which the influence of Harry Bridges has been strong.

Mr. Haywood attended the convention as personal representative of Philip Murray, CIO president, who chartered the utility union last August and has taken a close interest in its progress. The union has a national membership of 50,000. Last January it signed a maintenance-of-membership contract covering 20,000 employees of the Consolidated Edison Company of New York city.

Mr. Pachler said the decision to exclude Communists from the union was made because "99 per cent of the workers in the utility industry are violently opposed to Communism or any other 'ism.'"

Awards Announced

COLONEL Charles L. Hall, Corps of Engineers, North Atlantic Division Engineer and Service Command Engineer, recently announced the award of certificates of commendation to regional and post coördinators of the utilities wartime aid program in the Second Service Command. The awards were made at a formal presentation on April 15th in New York city.

These commendations expressed the appreciation of the War Department for the patriotic service performed by the recipients who in a position of trust and responsibility as regional and post coördinators of the utilities aid program rendered outstanding technical assistance to Army installations and the Service Command office.

The utilities wartime aid program group included responsible executives of power suppliers throughout the nation who assisted in solving technical, operating, and maintenance problems on military posts, camps, and stations. These regional and post coördinators, key engineers trained in an industry which for more than half a century has gained wide experience in the operation and maintenance of electrical facilities, volunteered to assist the Army in every phase of its wartime need.

Tidelands Measure Approved

THE Senate Judiciary Committee on April 23rd approved House-passed legislation surrendering to the states any Federal claim to the tidelands and their oil deposits. The vote was announced as 8 to 6 in favor of recommending the bill to the Senate for floor consideration.

The committee declined to make public the individual votes of the members, or to say which three Senators on the 17-member committee did not vote.

The legislation, supported by attorneys general of 46 states and numerous cities, would quit-claim to the states any Federal mineral rights on lands beneath tidewaters out to the 3-mile limit and on lands under navigable rivers, lakes, and bays.

A suit by the Federal government claiming Federal ownership of lands off the California coast is pending in the United States Supreme Court.

California

Drops Fight for Lower Rates

THE Los Angeles Department of Water and Power has abandoned its drive for a reduction in Boulder dam power rates which would permit aluminum reduction operations in the Los Angeles area competitive with operations in the Northwest area.

This was disclosed in an exchange of letters among the Los Angeles department, the War Assets Administration, Senator Joseph C. O'Mahoney, Wyoming Democrat, and Senator James Murray, Democrat of Montana.

A few months ago, when cutbacks in wartime industries pointed to a power surplus in the Los Angeles area, the Los Angeles power department cried out for a reduction in Boulder dam power rates which would permit competitive operation of the government-owned Los Angeles reduction plant to use excess Los Angeles power.

The anticipated power surplus did not develop, however, and the Los Angeles department is now not receptive to either a revision in Boulder power rates or operation of the Los Angeles reduction plant, for separate reasons. The reasoning behind the change of mind of the Los Angeles department toward operation of the Los Angeles reduction plant was set forth in a letter to the War Assets Administration by Samuel B. Morris, general manager of the department.

The letter said municipal interests of Los Angeles would be best served by reserving all Boulder dam power for high-employment, wealth-producing industries, such as fabricating plants. Power, it was said, is not the important cost factor in these industries that it is in aluminum reduction, which requires a large block of power.

A population increase and new industries have created heavy demands for Los Angeles power. All available Boulder dam power can now be marketed into high-employment industries. If the aluminum reduction plant, a low-employment enterprise, is placed in operation, it will mean that steam generation will have to be installed immediately in the Los Angeles power system—or the power requirements of high-employment industries would not be met.

The power department has withdrawn an offer, previously made, to make a slight reduction in power rates to an operator of the Los Angeles reduction plant who would establish an aluminum sheet-rolling mill in the Los Angeles area.

To Sell Facilities to District

CONTRACTS were signed last month by which the Sacramento Municipal Utility District will acquire from Pacific Gas and Electric Company its facilities within the district area, terminating long litigation.

The district has undertaken to buy all its power wholesale from the company until June 30, 1954. The load is about 60,000 kilowatts.

Price of the facilities which Pacific Gas and Electric has agreed to sell was set by the state railroad commission May 21, 1938, at $11,632,000 and the contract of purchase is at that figure, plus adjustments for further investment and depreciation to date, the latter amounts to be determined.

The electric load of PG&E in the district in 1945 brought about $5,400,000 revenue to the company, or about 3-6/10 per cent of its gross from all sources. On the basis of present business it is expected that the company will receive about $1,900,000 annually from the sale of power to the district, and after reinvestment of proceeds of the sale it is not expected the company's net earnings will be materially affected.

The contracts obviate necessity of district stand-by power investment, which would have been necessary had a power line been built from Shasta dam to carry government power.

With the signing of the contracts, PG&E now has term resale contracts with all municipalities and other resale customers in its field, except the town of Roseville, California, where the load is only about 12,000 kilowatts. While Roseville signed a contract with Central Valley last year for power, it is still being supplied by the company. PG&E under the present contract continues purchaser and distributor of all Central Valley power.

Delaware

Postpones Construction

THE Delaware Power & Light Company has postponed its plan to begin construction of a major power plant on the Delaware river, Wilmington, Stuart Cooper, president, announced at the annual stockholders meeting last month.

He said the postponement was made because of what he termed government regulations, uncertainties, and strikes closing steel and electric manufacturing plants.

Indiana

Reduced Rates Announced

RATE revisions for the Indianapolis Power & Light Company's 142,000 customers have been announced by H. T. Pritchard, utility president.

The new schedule, which has state public service commission approval, abolished the rate differential between rural and city residential users.

Company officials estimate the new rates will save approximately $750,000 a year.

The new rates were worked out by the company in conferences with the state commission after Federal tax reductions. Generally, the new schedule will apply on bills issued on and after June 1st, thus becoming effective on May service.

Residential users, representing approximately 88 per cent of the company's customers, will save $415,000, while a saving of $319,000 will be shared by more than 17,100 industrial and commercial customers. The remaining reduction will go to the city of Indianapolis and the state highway department on payments for street and traffic lights, and to Speedway, Beech Grove, Southport, Rocky Ripple, Creston, and Castleton for street lighting.

Kentucky

Rate Cut Approved

THE state public service commission on April 19th approved a rate reduction of $355,000 a year by the Kentucky & West Virginia Power Company of Ashland as a result of the utility's savings resulting from repeal of Federal excess profits taxes.

The commission last December directed all utilities to show cause why they should not reduce their rates in view of being relieved of the excess profits tax burden, and three of the larger companies responded.

Kentucky & West Virginia Power Company offered to lower its charges to large users $213,000 a year, which the commission accepted, then followed with an additional cut of $142,000 for its residential and commercial customers, making the $355,000 total approved recently.

The Louisville Gas & Electric Company submitted a reduced rate schedule $512,800 a year lower and Kentucky Utilities offered to cut its rates $250,000. Only Union Light, Heat & Power Company, which asked for a delay, has failed to respond with a proposed rate reduction.

City Asks Rate Cut

THE city of Frankfort protested to the state public service commission on April 17th that Kentucky Utilities Company is charging the city $30,000 a year more for its electricity than it charges other similar customers, and demanded that KU produce its records so the city can establish its case.

The commission took the matter under advisement and promised an order within a short time.

Marion Rider, attorney for the Frankfort Electric & Water Plant Board, a municipally owned corporation, which purchased the Frankfort utility property from the now-defunct Kentucky Tennessee Light & Power Company August 20, 1943, told the commission that KU had been supplying electricity to the Frankfort plant under a 1929 KT contract.

On the date the city took over the property, Rider said, KU refused to continue to deliver power under the old contract, but instituted instead a rate schedule known as Wholesale Power Rate No. 1, which had been approved by the commission in May, 1941.

Notwithstanding this rate charge, Rider said, the city continued to pay KU for services on the basis of the old contract until its expiration August 29, 1944, when Frankfort sought to negotiate a new contract with KU.

The records Rider asked the commission to order KU to produce include the names of all customers buying energy for resale, copies of their contracts, rate schedules, and monthly bills.

Seek Gas Rights

THE state public service commission on April 16th took under consideration the question of which of two utility companies shall be given the right to produce and sell natural gas in Danville.

Natural Gas Distributing Company, a new Kentucky corporation, petitioned the commission for authority to tap the Tennessee Gas & Transmission Company's Texas-to-West Virginia pipe line and supply Danville, Harrodsburg, Burgin, Wilmore, Nicholasville, and Lawrenceburg with natural gas. None of these towns has natural gas at present.

Kentucky Utilities Company has filed a protest against the other company's petition in so far as it concerns Danville, where KU owns and operates the artificial gas plant. In addition, KU has petitioned the commission for authority to convert its artificial system at Danville to natural gas, claiming it will effect a rate saving for the city's consumers.

F. C. Armbruster, Chicago, gas consultant for Midwest Service Company, branch of KU's parent Midwest Utilities Corporation, said some 9,540 feet of Danville streets would have to be opened in making the conversion to natural gas. Cost of the change-over Armbruster estimated at $84,199, including scrapping of the existing gas plant and a "book cost," less salvage, of only $48,860.

Louisiana

Seeks "Uniform" Accounts

THE state public service commission last month notified 12 electric power companies that it proposes to prescribe a "uniform system of accounts" for electric utilities in the state.

The citation was in the form of a notice that the commission would hold a hearing later on the matter, probably early in May, at which companies could make suggestions and show cause, if any, why the commission should not issue such an order.

The companies are those whose books the commission is now having inspected, with an announced view toward ordering lower rates. Clayton Coleman, commission acting secretary, said several of the firms already have adopted the standard system of accounting.

Companies cited were: Gulf Public Service, Louisiana Power & Light, Gulf States Utilities, Southwestern Gas & Electric, Louisiana Public Utilities, Central Louisiana Electric, Gaylord Container Corporation, Community Public Service, Peoples Utilities, Inc., Oak Grove Utilities, Madisonville Industries, Inc., Russom Mallory Light & Power.

Minnesota

REA Approves Loans

LOANS totaling $3,694,500 to nine Minnesota rural electric coöperatives to finance purchase of the Eastern Minnesota Power Corporation have been approved by the Rural Electrification Administration.

The funds also will be sufficient, the REA said, to permit construction of 1,141 miles of new electric power lines to serve 2,658 new rural consumers in the general area now covered by the Eastern Minnesota Power Corporation.

Rehabilitation by the coöperatives of the corporation's generating and transmission facilities and its 685 miles of line serving 5,616 consumers in 10 Minnesota counties is planned, the REA said.

The coöperatives receiving the loans for purchase of the corporation, a subsidiary of the Manufacturers Trust Company, New York, are: PICK Coöperative Electric Association, Braham, $1,737,000; McLeod Coöperative Power Association, Glencoe, $55,000; Brown County Electrical Association, Sleepy Eye, $17,000; Anoka County Light & Power, Anoka, $202,000; Minnesota Valley Electric Coöperative, Jordan, $115,000; Blue Earth-Nicollet Coöperative Electric Association, Mankato, $52,000; Mille Lacs Region Coöperative Power & Light, Aitkin, $150,000; North Pine Electric Coöperative, Inc., Finlayson, $215,000; Rural Coöperative Power Association, Maple Lake, $1,151,500.

The REA also announced approval of a loan of $360,000 to the Wild Rice Electric Coöperative, Inc., Mahnomen, Minnesota, for construction of 294 miles of line.

New York

To Pay State for Water

ATTORNEY General Goldstein has effected an agreement in favor of the state that ends the century-old controversy over whether the Niagara Falls Power Company should pay for water it diverts from the Niagara river for the generation of electric power.

The agreement requires the company to pay the state annually $1,100,000 in rental charges for 20,000 cubic feet of water per second diverted from the river. It extends for a 12-year period, commencing July 1, 1943, and prohibits the company from charging to its customers any part of the rental.

Mr. Goldstein and the company arrived at their agreement after Supreme Court Justice Francis Bergan of Albany ruled last September that a 1943 law asserting the state's priority to the water was constitutional.

Solicitor General Orrin G. Judd, who supported the law before Justice Bergan, presented the settlement to the state water power and control commission as the basis for a resolution fixing the rental. Mr. Judd said that, while the action involved only the law relating to the Niagara river, its sets a precedent applicable to other state waters.

"It establishes for the first time in this state," he said, "or in any other state, the proposition that where public waters of a state are used for private purposes a charge may be made by the state since such gifts of nature belong to all the people and may not be used by any private interest without fair compensation to the people."

Projects Dependent on Fare

BECAUSE of the present fiscal position of New York city, 400 public works projects, to cost $953,435,865 of city funds, "apparently must be deferred for at least three or four years and may be deferred a good deal longer unless the entire financial picture is changed by the adoption of a higher transit fare," according to a report recently submitted to Mayor O'Dwyer by Robert Moses, city construction coördinator in charge of the postwar program.

The report, sent to the mayor, the board of estimate, the city council, and the city planning commission, declared that "if the people of New York want these improvements a higher fare seems the only answer."

Although Mr. Moses made no recommendation concerning the new rate of fare, he assumed "for the sake of argument" that a referendum on a 10-cent fare would be carried in the general election in 1947 and that the city could begin collecting the higher fare on its unified transit lines about April 1, 1948. In that event, he predicted, the subway lines could be shown early in 1949 to be self-supporting, immediately lifting $425,000,000 of subway debt out of the constitutional debt limit, and making it possible to provide, in the capital budgets for 1949 and succeeding years, for many of the improvements that must now be deferred.

Ohio

Levies User Tax on Utilities

A 5 per cent utility consumers tax went into effect at Portsmouth on April 18th and the city council announced that a municipal income tax also would be recommended to the voters.

The utility tax, adopted unanimously by council April 17th, will be collected on electric, gas, telephone, and water bills. It is expected to provide $90,000 a year for financing wage increases of city employees.

The income tax, based on Toledo's plan, would amount either to 1 per cent or half of 1 per cent.

City councilmen hope to submit it to a referendum in November.

If the income tax should be ratified, the utility tax would be repealed.

A pay increase of 15 cents an hour was scheduled to be granted May 1st to 100 city service, garage, and waterworks employees who conducted a 3-day sit-down strike last month, council announced.

Oklahoma

Rate Reductions Announced

TOTAL reductions in electric rates for 1946 amounting to $767,968 to customers of Oklahoma Gas & Electric Company were announced on April 25th by Reford Bond, chairman of the state corporation commission. The reductions will become effective on bills rendered after July 1, 1946.

Of these reductions, $567,494 is to be shared by OG&E residential, commercial, and rural customers.

Commission Chairman Bond previously announced a reduction of $200,464 to municipalities for street lighting, water pumping, and public buildings, and for electricity used in state and county buildings and in public schools.

Bond said the reductions were a continuation of the commission's policy to work coöperatively with Oklahoma Gas & Electric to provide the lowest-cost electric service which sound business economics will permit. He said these reductions were made possible by savings effected by the recent refinancing of OG&E securities, by changes in Federal income tax laws and by continued efficient operation on the part of company management.

Oregon

Vows to Fight PUD

THE bitter preëlection fight between the Public Utility District and the Pacific Power & Light Company moved toward a climax in The Dalles last month when businessmen were told that win or lose in the city franchise May 17th the power company will stay in business, thereby forcing the PUD to erect duplicating lines.

The statement was made by Allen A. Smith, Portland, legal representative for the power company, at a meeting of approximately fifty businessmen, sponsored by the PP&L.

"The PUD is the culmination of a movement started twenty-five years ago in Washington, D. C., by a group that does not believe in free enterprise. They believe the country's affairs should be managed through socialization, beginning with the power companies.

"Railroads and banks are next," he asserted.

He said the Pacific Power & Light was "fighting for free enterprise against a program of socialism," and that the company would "stay in The Dalles and fight it out on this line."

Pennsylvania

Union Accepts Pay Award

THE general committee of the Duquesne Light Company's independent union recently accepted an arbitration board's award of an 18-cent-an-hour general wage increase. The union, the Independent Association of Employees of the Duquesne Light Company and Associated Companies, can reopen contracts July 1st to ask for more wages.

The 46-man general committee, after accepting the board's wage increase, said it was accepted with "unanimous disagreement with the arbitrator's methods."

George L. Mueller, president of the union, said the union "has to accept the arbitrator's award now, since that was our agreement."

The wage dispute was put into the hands of a 3-man arbitration board when weeks of negotiations between company and union officials failed to bring a settlement.

Representatives of city, state, and Federal government intervened when the workers went on a one-day strike last February. The case was submitted to the arbitrators to avert another scheduled strike.

Asks Details on OPA Suit

THE Peoples Natural Gas Company has no objection to being sued by the Office of Price Administration, it said recently. But it would like to know what the suit is all about. The company made the request on April 18th in answer to a Federal court suit filed by the OPA last March.

It asked that the court make the OPA say just what the suit is about, and cite names, dates, and places.

The suit filed by OPA charged that the company had sold natural gasoline at above-ceiling prices.

Tennessee

Power Leaders to Meet

LEADING personalities in the field of electric power are to participate in the first postwar meeting of the American Public Power Association to be held at Memphis May 9th and 10th.

Claude R. Wickard, former Secretary of Agriculture and now head of the Rural Electrification Administration, and Chairman David E. Lilienthal of the TVA are among the speakers scheduled for the 2-day program. Leland Olds of the Federal Power Commission also will be heard.

The Memphis Light, Gas, and Water Division will be host to the association, with membership comprising municipally owned and operated electric utilities. Major Thomas H. Allen, president of the Memphis division, will preside at the organization's business session the afternoon of May 10th. Mayor Chandler will extend the official welcome opening day.

Also slated to attend were representatives from General Electric, Westinghouse, Allis-Chalmers, and American Telephone and Telegraph Company, as well as leaders of the electric industry on the West coast.

Texas

Utilities Pay City Tax

WITH the delivery of checks covering gross receipts of the Texas Public Service Company and the Southwestern Bell Telephone Company, a total of $74,205.30 has been received by the city of Galveston from the four utilities required under ordinance to pay the city a 2 per cent tax on their gross receipts, it was announced last month by Gus F. Jud, tax assessor and collector for Galveston.

The Galveston Electric Company check totaled $21,490.38.

The Southwestern Bell Telephone Company paid $13,885.60.

The payment of the Texas Public Service Company amounted to $14,122.70.

The largest amount was received from Houston Lighting & Power Company, the payment being $24,706.62.

Washington

Enters Power Sale Suit

SUPERIOR Judge W. L. Brickey recently granted the petition of Smith Troy, state attorney general, to appear as "friend of the court" in the case of Skagit County Public Utility District No. 1 *versus* its secrtary, John Wylie, in connection with the proposed issuance of $135,000,000 worth of bonds to purchase the Puget Sound Power & Light Company properties.

Troy petitioned for permission to appear in the case on the ground that "the case involves difficult and novel questions of law of great public interest," and that he may be called upon in the future to advise on legality of the bonds.

Attorneys for Tacoma's Weyerhaeuser Timber Company, appearing as intervenor in the court test of legality of the transaction, were granted one week's grace by Presiding Judge Brickey, following three days' hearings. Supported by State Attorney Troy, W. E. Heidinger, attorney for Weyerhaeuser, asked for a continuance of at least twenty days, as opposed to PUD efforts to press the hearing through to swift completion.

Both sides agreed to the compromise delay of seven days after Troy called the case the most important issue now before people of the state.

Harold Shefelman, PUD attorney, cited public interest as his reason for pressing for swift completion of the case in superior court, holding out possibility that that issue could be entered on the May term of the state supreme court.

Robert W. Beck, Columbus, Nebraska, consulting engineer, completed two full days on the stand April 19th. Under cross-examination by counsel for the timber company, Beck testified he was being paid by bankers interested in underwriting the bond issue with which the Skagit PUD would buy the system and put itself and 14 other public utility districts in the power business. Beck said his checks were signed by John Nuveen & Co., of New York and Chicago, but declined to divulge the identity of persons behind that company.

Later, one of Beck's fellow townsmen, Charles F. Fricke, Columbus, testified that the Nebraska Consumers Public Power District, which Fricke formerly headed, paid Guy C. Myers approximately $750,000 to act as its fiscal agent in acquiring the properties of 16 Nebraska private power companies for $47,000,000.

Myers, also fiscal agent for Washington state public utility districts, is to get $1,350,000 in connection with the PSP&L purchase, it was testified.

The Latest Utility Rulings

Original Cost Less Depreciation Plus Working Capital Adopted As Rate Base

A REDUCTION in the wholesale natural gas rates of the Mississippi River Fuel Corporation was ordered by the Federal Power Commission. The reduction was based on a return of 6 per cent on a rate base consisting of actual legitimate cost of gas plant, less accrued depreciation, plus necessary working capital.

The company has two classes of customers—utility and industrial. Sales of natural gas to the former are subject to commission regulation, whereas sales to the latter are not. Therefore, it was necessary to make an allocation of cost of service to segregate the regulated and unregulated business. Such an allocation, the commission said, would serve as a guide to reasonable rates for gas sold to utility customers for resale.

The commission used a method of cost allocation which, it said, reflected the conditions, priorities, and characteristics of natural gas service. The cost components, such as gas purchased expense; operation, maintenance, and general expenses; depreciation expense; taxes; and return or profit were classified as "commodity" and "demand" charges for the purpose of allocating them to the classes of customers.

Considering the required demand during the period of most severe operating conditions, the system peak day, and other demand data, the commission concluded that it was reasonable to allocate 51 per cent of the "demand" cost to regulated sales and 49 per cent to unregulated sales, of which latter figure 41 per cent applied to firm sales, and 8 per cent to interruptible sales.

A rate of 3½ per cent was used on a straight-line basis for computing both annual and accrued depreciation. The cash working capital allowance, computed on the basis of forty-five days' lag between actual receipt of revenues and payment of related expenses, was considered liberal.

The commission considered actual operating revenues and expenses for the years 1930 to 1943, inclusive, and the first four months of 1944, and concluded that the 1943 experience of the company presented the most reliable guide for fixing future rates. The company contended that 1943 was not a good test period because of the approaching curtailment of the use of gas for war production, alleging that revenues would decrease more than operating expenses, with a resulting decrease in net earnings. The commission pointed out, however, that six of the utility customer companies expect to increase their future requirements for natural gas, that one of the companies has a large industrial consumer in war production whose loss could be met by converting consumers from mixed to straight natural gas, that one of the companies is committed to distribute natural gas when it becomes economically practicable, that the sale of gas in one of the areas was far from the saturation point when compared with per customer sales in other areas, and that the area has great peacetime industries.

The return allowed by the commission was set at 6 per cent in view of Mississippi's strong operating financial and credit position. The commission observed that the company is a seasoned, well-developed enterprise with ample past and present provisions for depreciation and current high profits, that it has established markets with great potential

growth in a populous and industrialized area desiring to convert from mixed gas to straight natural gas. In fact, all of the evidence pointed to Mississippi's strong position enabling it to attract capital upon favorable terms when required. *Re Mississippi River Fuel Corp. et al. (Docket No. G-462, Opinion No. 126).*

Coke Plant Acquisition by Gas Company Found Consistent with Public Interest

THE Wisconsin commission authorized the Milwaukee Gas Light Company to acquire from American Light & Traction Company all of the outstanding capital stock of Milwaukee Solvay Coke Company and to purchase certain real estate from Consolidated Building Company. These companies are affiliated, and disposition of the properties was in futherance of holding company simplification plans. A change in par value of stock and issuance of stock to accomplish the acquisition were also authorized.

The coke plant supplies the gas company with about 70 per cent of its supply of manufactured gas. The real estate involved is a vacant lot adjacent to the gas company's main office and presently leased by it for parking purposes. The value of the coke company common stock which was to be exchanged for stock of the gas company was found to be not less than the nominal purchase price proposed.

The proposed purchase price of the real estate was held to be excessive, and a condition was imposed that the price should be reduced.

The commission thought the "public interest" contemplated by the governing statute was the interest of that particular portion of the public which is entitled to the public utility service of the gas company and which interest is involved in or related to that service. The commission did not consider the transaction to be contrary to the public interest. It was said:

> That is the question that we must decide since the transaction, if not contrary to the public interest, must be held to be consistent with it.

Commissioner Bryan, in a dissenting opinion, disagreed with this view of public interest. He said that "public interest" is a broader term than "public convenience and necessity" and involves more than the interest of utility customers; it embraces the interests of present and prospective security holders and may, in some instances, be properly construed to include other matters of interest to the public generally. The majority had acted on the theory that it was neither the guardian nor adviser of the affil.tes in the holding company system. *Re Milwaukee Gas Light Co. (2-SB-258).*

Working Capital and Expenses of Wholesale Gas Company Involved in Rate Case

A REDUCTION in rates of the Penn-York Natural Gas Corporation for the transportation and sale of natural gas to Republic Light, Heat & Power Company for resale has been ordered by the Federal Power Commission. A 2-part rate, consisting of a commodity charge and a flat monthly transportation charge, was approved. This, the commission estimated, would produce a return of 6 per cent, as to which the commission said:

> It is common knowledge that we are in the period of the lowest cost of money in history. Penn-York has an established market, an ample gas supply through existing pipe-line connections and contracts, and has made adequate past and present provisions for depreciations. Its pipe-line enterprise has no unusual hazards; and the capacity of its

pipe line is sufficient to enable it to deliver additional volumes of gas without additional investment.

An additional allowance was requested for working capital based upon a 10-day interval between the date the company pays for gas purchased and the date it receives payment from its sole customer. The commission observed, however, that under filed rate schedules provisions for payment for purchased gas and for gas sold by Penn-York were identical concerning the time for payment. But the company and its affiliated customer had extended the customer's time for payment, which created the 10-day lag. No sufficient justification for this action between affiliated companies was offered, and the commission said it would be improper to include this item in the working capital allowance.

The commission's staff included in its recommendation for working capital approximately $600 for maintenance, which was the average annual expenditure for maintenance during the four years 1941-1944. A company witness testified that future maintenance would be substantially greater, since certain maintenance had been deferred and normal maintenance would increase by reason of the age of the pipe line. He estimated this future expense would be $10,900 annually. Obviously, said the commission, the $600 allowance was too low, and the company's claim was allowed.

Claims for additional administrative and general expenses and for Federal income taxes based on the assumption that Penn-York would no longer be a member of its holding company system were disallowed.

The commission noted that a directive of the Securities and Exchange Commission to the parent company to divest itself of certain subsidiaries had subsequently been changed to permit the retention of Penn-York. *Re Penn-York Natural Gas Corp. (Opinion No. 129, Docket No. G-600).*

Joint Consideration of Separate Applications Upheld by Supreme Court

THE Supreme Court affirmed action of the Interstate Commerce Commission which, on separate applications by two motor carriers which had previously jointly operated a single motor carrier service between certain points, authorized the substitution of separate and competing through services by the carriers between such points. Evidence was held to support the commission's findings that future convenience and necessity required the separate services, and objections to alleged procedural defects were held to be without merit.

The Federal District Court had set aside the order on the ground that the commission had considered the separate records relating to the separate applications as though the cases constituted a consolidated case, that evidence which appeared only in one record was used by the commission to support general findings in the report concerning both applications, and that, in each proceeding, evidence not offered or received in such proceeding and not a part of the record therein was drawn upon and considered by the commission. In other words, the Supreme Court was of the opinion that the lower court had objected to the way in which it thought the commission had considered the cases and reached its conclusions.

The Supreme Court ruled that it was no sufficient ground for suspending the commission's order that it chose to write one report rather than two, especially in matters as closely related as these. It was observed that it is not uncommon judicial practice to follow this course. Nor, with these conditions satisfied, said the court, could the mere fact that the commission chose to grant, rather than to deny, both applications, or to grant one and deny the other, invalidate the commission's judgment.

The question whether new issues were

injected by the commission's action in thus disposing of the cases was presented. In discussing this matter the court said:

> The commission did not, by the manner in which it disposed of the cause, inject as a "new issue" the question whether both applications might be granted. If the appellees actually assumed in the beginning that both applications could not be granted, their assumption was in the teeth of the applications and the permissible outcomes presented for the commission's decision.
>
> As has been said, the two applications were separately instituted and heard. In the natural course of events each joint board was to decide whether to grant or to deny the particular application before it. The possibilities therefore were that both applications might be denied, that one might be granted and the other denied, or that both might be granted. Moreover, the record contains evidence showing that the possibility of granting both applications was in the minds of counsel and witnesses. . . . The parties too apparently gave similar recognition to the questioned possible outcome by their stipulation for the use of evidence in both proceedings.
>
> The issue concerning whether both applications should be granted was injected, not by the commission's report or any other action taken by it, but by the filing of the applications in the first place. If appellees misconceived the nature of the proceedings in this respect, as we do not think was the case, they were not misled into doing so by any action of the commission or the other appellants.

While the court has limited the use of judicial notice by administrative agencies in order to be sure that parties will not be deprived of a fair hearing, it has not made a fetish of sticking squarely within the four corners of the specific record in administrative proceedings or of pinning down such agencies with reference to fact determinations, even more rigidly than the courts in strictly judicial proceedings. Therefore, the court said, the mere fact that the commission looked beyond the record proper in these cases did not invalidate its action, particularly where no substantial prejudice resulted. In other words, the court said, the commission was not bound to consider each case exclusively on its own record, but could look to the evidence in both proceedings in forming its judgment. *United States of America et al. v. Pierce Auto Freight Line, Inc. et al. (No. 74).*

Increase in Demurrage Charge Upheld Without OPA Approval

An Interstate Commerce Commission order changing the method of computing "free time" in scale of demurrage charges on refrigerator cars was upheld by the United States District Court for the District of Columbia, even though no notice was given to Price Administrator. The court ruled that since the commission was empowered to make such order without a hearing, there would have been no proceeding in which the administrator might have intervened, had he received notice. The order was reversed in so far as it increased the demurrage charges during the Christmas holidays, since during those days the increased charge would in no way accomplish the purpose for which it was intended; *i.e.*, the more rapid unloading of refrigerator cars. *Iversen et al. v. United States et al. 63 F Supp 1001.*

Commission Refuses to Pass on Validity of Law

The Colorado commission denied a motion to dismiss a complaint against a sanitation district where it was contended that the act making the rates subject to commission jurisdiction was unconstitutional. The commission said:

> The legislature has, by various acts, including the 1939 Act, imposed certain duties upon this commission. In effect, the respondent now asks this commission, which also was created by the legislature, to determine the question of whether or not an act of the legislature violates the Constitution.

We are of the opinion that this commission cannot pass upon the constitutionality of an act of the legislature under which duties are prescribed for this commission, and that, until a court in a proper case holds the act of the legislature in question unconstitutional, we must obey that law. Consequently, the only course left open for this commission is to proceed upon the theory that the law is constitutional.

School District No. 47 in the County of Jefferson v. Lake Sanitation District (Decision No. 25747, Case No. 4934).

Other Important Rulings

THE Wisconsin commission held that the fact that the lines of a telephone company run past and beyond a certain residence at a distance less than the distance within which that utility will render free extension of service suffices to spell out an undertaking or obligation of service of the company to that residence. *Re La Crosse Teleph. Corp. (2-U-2104).*

The Securities and Exchange Commission approved a holding company simplification plan providing that all the public utility operating companies in the system would be direct subsidiaries of a single holding company having a capital structure of only debt securities and common stock outstanding in lieu of 18 classes of holding company securities now outstanding, for the assumption of the funded debt of the present holding companies and the replacement thereof by a new issue of debt securities, and for the distribution of cash and new common stock in exchange for outstanding preferred and common stock of the existing holding companies, it believing that the respective holders of each class of the outstanding securities of the holding companies were to receive the equitable equivalent of their existing rights. *Re New England Power Asso. (File Nos. 54-92, 59-14, 54-19, Release No. 6470).*

The United States Supreme Court affirmed the denial by the Interstate Commerce Commission of an application by a water carrier for a certificate of convenience and necessity under the "grandfather" clause of the Interstate Commerce Act, on the ground that the carrier had ceased the type of operation for which authorization was sought prior to January 1, 1940, the critical date upon which "grandfather" rights are based. Allegations, unsupported by evidence, that the war effort forced a continued abandonment of services in question were considered too hypothetical to corroborate applicant's claim that the abandonment was involuntary. *McAllister Lighterage Line, Inc. v. United States (No. 616).*

A water utility was held entitled to extend service to contiguous areas without further authorization by the California commission, and it was further held that unified operation under one ownership, as a single system, of two formerly separate but adjoining waterworks required no further authority. *Re Monterey Bay Water Co. (Decision No. 38448, Application No. 26566).*

A Federal District Court, in dismissing a suit to set aside an order of the Interstate Commerce Commission granting some but not all of the operating authority sought by a trucking company, held that the court should not interfere where an order is based on findings either that there exists no public convenience and necessity or that existing authorized carriers are ready and able to serve the public adequately; and it held further that it is not the province of a court to weigh conflicting evidence offered before the commission or to invade the commission's realm of legislative discretion. *McLean Trucking Co., Inc., of Winston Salem, N. C. v. United States et al. 63 F Supp 829.*

A Federal District Court, in setting aside an order of the Interstate Commerce Commission canceling a certificate

and issuing a new certificate for common carrier transportation by water, held that the provision of the Interstate Commerce Act authorizing the commission to modify or set aside its orders applies to regulatory orders and does not permit the cancellation of orders authorizing the issuance of certificates of convenience and necessity. *Seatrain Lines, Inc. v. United States, 64 F Supp 156.*

The Colorado commission ruled that the nonuse of a private motor carrier permit, continuing as it did for a period of over eleven years, coupled with the fact that the only time any interest in the permit was shown was on the occasion of a contemplated sale, clearly showed an intention on the part of the carrier never to use the permit, and consequently resulted in a definite abandonment thereof, justifying rescission of the permit. What the carrier did rather than what he said was his intention to do should and must govern, it was said. *Re C. W. Kelley (Case No. 4927, Decision No. 25522).*

The Colorado commission, after stating that transportation of houses by motor vehicle carriers is a class of traffic of such a nature that it is not susceptible to rates that the commission has prescribed, concluded that the commission should not prescribe rates for the movements of houses, thereby leaving the carrier free to establish and publish whatever rates and rules it feels should be established. *Re Rates on Movements of Houses (Decision No. 25706, Case No. 1585).*

The Iowa commission, after finding that the establishment of motor carrier service was required by the public interest, granted a certificate to the first applicant for such a certificate where several applicants were qualified. *Re Stith et al. (Docket Nos. H-3652, H-3653, H-3657, H-3665, H-3670).*

The New York commission held that it had jurisdiction to assess the costs and expenses relating to its investigation of the service provided by a bus company in New York city, notwithstanding the fact that the regulatory body whose functions, powers, obligations, and duties were transferred to the commission upon its dissolution had no power to assess such costs against the bus company. *Re East Side Omnibus Corp. (Case 11234).*

The Connecticut commission declared that in successive rate proceedings the commission as a general rule would not justify proposed increases by taking judicial notice of increased costs of labor and materials but would expect data substantiated by actual operating records to be presented. *Re Rates on Household Goods (Docket No. 7724, Investigation and Suspension No. 27).*

In an action by the Interstate Commerce Commission to restrain a motor carrier from committing acts allegedly unauthorized by its certificate, the United States District Court refused to make a judicial interpretation of the carrier's certificate on the ground that the commission's interpretation was binding and could not be attacked collaterally. *Interstate Commerce Commission v. G&M Motor Transfer Co. 64 F Supp 302.*

In considering demands of near-by towns for water service from a city water system, the Wisconsin commission ruled that the amount and adequacy of the facilities of a public utility cannot be considered a proper criterion of its obligation of service. *Re Madison (2-U-1734).*

A commission order granting a certificate of convenience and necessity to the one of two rival bus company applicants who offered the more extensive service was affirmed on appeal by the Arkansas Supreme Court, which held that the order was neither improper nor against the weight of the evidence. *Camden Transit Co. v. Owen et al. 192 SW2d 757.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 62 PUR (NS) NUMBER 5

Points of Special Interest

SUBJECT	PAGE
Congressional regulation of holding company system	257
Interstate character of holding company activities	257
Constitutional limitations on holding company regulation	257
Intercompany contract for gas supply	273
Conversion to liquefied petroleum gas	273
Ownership provision of Federal Power Act	276
Public power exemption from Federal Power Act	276
Corporate reorganization under Holding Company Act	299
Accounting for financing costs	309
Exchange of preferred stock	309
Extension of rural electric lines	315
Consent or objection to service abandonment	317
Dual private and common carrier service	319

Titles and Index

TITLES

California Water Service Co., Re ..... (Cal) 309
Chenery Corp. v. Securities and Exchange Commission ..... (USCtApp[DC]) 299
Federal Water & Gas Corp. v. Securities and Exchange Commission .... (USCtApp[DC]) 299
Gage, Re ..... (Wash) 319
Nebraska Power Co., Re ..... (FPC) 276
North American Co. v. Securities and Exchange Commission ..... (USSupCt) 257
Northern States Power Co., Re ..... (Wis) 315
Ojibwa Electric Co., Re ..... (Wis) 317
Peoples Gas Co., Re ..... (Wis) 273

INDEX

Accounting — expense of refunding, 309; premium on sale of stock, 309; underwriter's fee, 309.

Certificates of convenience and necessity—extension of rural electric line, 315.

Consolidation, merger, and sale—disposition to state political subdivision, 276; necessity of Commission approval, 276.

Constitutional law—holding company integration requirements, 257.

Corporations—Commission powers, 299; participation by officers and directors in reorganization under Holding Company Act, 299.

Depreciation—bottled gas plant, 273.

Electricity—jurisdiction of Federal Power Commission, 273; public power exemption, 276; regulation of governmental units, 276.

Intercorporate relations—contract with affiliate for gas supply, 273; integration of holding company system, 257.

Interstate commerce—powers of Congress, 257; regulation of holding company ownership of securities, 257; status of holding company activities, 257.

Monopoly and competition—dual operation as private and common carrier, 319.

Security issues—exchange of preferred stock, 309; jurisdiction of Federal Power Commission, 276.

Service—abandonment, 317; conversion to liquefied petroleum gas, 273.

Statutes—construction of ownership provision of Federal Power Act, 276.

UNITED STATES SUPREME COURT

The North American Company

v.

Securities and Exchange Commission

No. 1
— US —, 90 L ed —, 66 S Ct —
April 1, 1946

CERTIORARI to United States Circuit Court of Appeals for the Second Circuit to review judgment affirming orders of Securities and Exchange Commission in proceeding for simplification of holding company system under § 11(b) (1) of the Holding Company Act, 15 USCA § 79k(b)(1); affirmed. For decision of lower court, see (1943) 47 PUR(NS) 6, 133 F2d 148, affirming (1942) 11 SEC 194, 43 PUR(NS) 257.

Interstate commerce, § 84 — Powers of Congress — Public utility holding company — Affiliated companies.

1. A top holding company in a system of corporations, the majority of which operate electric and gas utility properties scattered throughout the United States, many of them transmitting electricity across state lines, is engaged in activities which bring it within the ambit of congressional authority, p. 260.

Intercorporate relations, § 14.1 — Control by holding company — Absence of active intervention.

2. A corporation which has extensively acquired and holds securities of public utility corporations may be treated as possessing domination over its subsidiaries, or the power to dominate them when and if necessary, although active intervention in their activities has been of a limited character (mainly in financing) and the holding company has not sold the subsidiaries any supplies or engineering services, where lack of active interference appears to have resulted in large part with the company's satisfaction with local managements, which have often included men selected by or historically related to the top holding company, p. 261.

Interstate commerce, § 27.1 — Status of holding company activities.

3. A top holding company and its subsidiaries are interstate in character, and the holding company is not a mere investor in its subsidiaries, where it is the nucleus of a far-flung empire of corporations extending over the United States, its influence and domination permeate the entire system, the mails and instrumentalities of interstate commerce are vital to the functioning of the system, and direct utility subsidiaries transmit energy across state lines, p. 262.

Interstate commerce, § 84 — Holding company regulation — Ownership of securities.

4. The ownership of securities by a holding company, although not commerce when considered separately and abstractly, is so clearly and definitely related to interstate commerce when considered in the context of public utility holding companies and their subsidiaries as to support the power of Congress to require such holding companies to dispose of their security holdings and to confine their activities in accordance with the standards of § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), p. 266.

Interstate commerce, § 1 — Powers of Congress — Intrastate activities.

5. Congress has plenary power under the Commerce Clause of the Constitution, and such power extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations, p. 266.

Interstate commerce, § 1 — Powers of Congress — Effect of state laws and private contracts.

6. The power of Congress under the Commerce Clause of the Constitution is an affirmative power commensurate with the national needs and is not restricted by state laws or private contracts, and in using this power Congress is not bound by technical legal conceptions, p. 269.

Interstate commerce, § 1 — Powers of Congress — Corporate financial practices.

7. The fact that an evil against which congressional action is directed may involve a corporation's financial practices, its business structure, or its security portfolio does not detract from the power of Congress under the Commerce Clause to promulgate rules in order to destroy that evil, since when it is once established that the evil concerns or affects commerce in more states than one, Congress may act, p. 269.

Interstate commerce, § 84 — Holding company regulation — Ownership of securities.

8. Congress has power under the Commerce Clause to attempt to remove economic evils resulting from uncoördinated and unintegrated public utility holding company systems by ordering the holding companies to divest themselves of the securities that made such evils possible, p. 270.

Intercorporate relations, § 5.1 — Holding company regulation — Due process — Divestment of securities.

9. Section 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), does not violate the Due Process Clause of the Fifth Amendment of the Constitution by requiring a holding company to divest itself of its scattered subsidiaries and to confine its operations to a single integrated system, p. 270.

Courts, § 4 — Legislative matters — Holding Company Act.

10. The reasonableness of a conclusion, from extensive congressional studies, that the economic advantages of a holding company at the top of an unintegrated, sprawling system are not commensurate with the resulting economic disadvantages is one for Congress to determine; when Congress, in the exercise of its discretion, has decided that it is necessary to reorganize

holding company structures, a court cannot question the appropriateness or propriety of its decision, p. 270.

Constitutional law, § 15 — Guaranty of due process — Valuable interests affected.

11. The fact that valuable interests may be affected does not by itself render invalid, under the Due Process Clause, a determination made by Congress, p. 270.

Intercorporate relations, § 5.1 — Holding company regulation — Constitutional requirements.

12. Section 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), is not unconstitutional as applied to a particular holding company even though that company may not be guilty of economic evils enumerated in § 1(b) of the act, 15 USCA § 79a(b), since Congress has power to legislate generally, unlimited by proof of the existence of the evils in each particular situation, p. 272.

Intercorporate relations, § 19.3 — Holding Company Act — Integration of system.

Explanation, by Supreme Court, of the provisions and requirements of § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), and related sections of the act providing for integration of public utility systems, p. 264.

Intercorporate relations, § 19.22 — Holding company regulation — Exemption — Predominantly local companies.

Discussion, by the Supreme Court, of the power of the Securities and Exchange Commission, under § 3(a) of the Holding Company Act, to deny an exemption to a predominantly local holding company, p. 265.

Mr. Justice MURPHY delivered the opinion of the court: Congress enacted the Public Utility Holding Company Act of 1935, 49 Stat 803, in order to correct grave abuses which it had found in the use of the holding company device in the nation's electric and gas utility industries. This court in Electric Bond & Share Co. v. Securities and Exchange Commission (1938) 303 US 419, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105, held constitutional the various provisions of the act relating to the registration of holding companies as therein defined. In this case we are called upon to determine the constitutionality of § 11(b)(1) of the act, 15 USCA § 79k(b)(1), authorizing the Securities and Exchange Commission to act to bring about the geographic and economic integration of holding company systems. Specifically, we must decide whether this requirement falls within the power of Congress to regulate commerce among the several states and whether it violates the Due Process Clause of the Fifth Amendment.

The North American Company, the petitioner, is a holding company within the meaning of the act, § 2(a)(7), 15 USCA § 79b(a)(7), and is registered as such with the Securities and Exchange Commission.[1] The Commission instituted appropriate admin-

[1] North American registered with the Commission on February 25, 1937, reserving its right to challenge the constitutionality of § 11(b)(1) and other portions of the act. See Landis v. The North American Co. (1936) 229 US 248, 251, 81 L ed 153, 57 S

istrative proceedings against North American under § 11(b)(1), the provisions of which apply to registered holding companies. As a result, the Commission entered orders limiting North American's properties to those which, in the Commission's judgment, complied with the standards of § 11 (b)(1) and compelling it to sever relationships with all its other properties.[2] The court below, after affirming the orders of the Commission on a statutory level, rejected North American's constitutional objections. (1943) 47 PUR(NS) 6, 133 F2d 148. Only these constitutional issues are now before us.

[1] As was the situation in the Electric Bond & Share Co. Case, *supra*, North American is clearly engaged in activities which bring it within the ambit of congressional authority. North American is a typical utility holding company. It is the pinnacle of a great pyramid of corporations, the majority of which operate electric and gas utility properties. These properties are scattered throughout the United States, many of them serving large cities and contiguous territories.[3] Electric energy is transmitted across state lines by numerous companies in the pyramid or system.[4] As of December 31, 1940, there were some eighty corporations in the system, with an aggregate capitalized value in excess of $2,300,000,000. Organized in New Jersey in 1890 and maintaining business headquarters in New York city, North American maintains direct or indirect interests in these corporations through the medium of stock ownership. It is that medium that binds the system together.

North American owns stock directly in ten of the corporations, holding 79 per cent or more of the common stock of eight of them and 17.71 per cent and 19.2 per cent, respectively, of the voting securities of the other two. Three of these direct subsidiaries are registered holding companies: (1) Union Electric Company of Missouri, operating in and around St. Louis, Mo., and with subsidiaries operating in Illinois and Iowa as well; (2) Washington Railway and Electric Company, with subsidiaries operating in the District of Columbia and adjacent territory in Virginia and Maryland; and (3) North American Light & Power Company, operating extensive systems in Kansas, Missouri, Illinois and Iowa in addition to being the parent of several registered holding companies.

Four of the direct subsidiaries of North American are operating companies: (1) Cleveland Electric Illuminating Company, serving Cleveland, Ohio, and surrounding territory; (2) Pacific Gas & Electric Company, serving large areas in California; (3) The Detroit Edison Company, serving Detroit and vicinity; and (4) Wis-

Ct 163; Electric Bond & Share Co. v. Securities and Exchange Commission (cited above).

[2] Holding Company Act Releases Nos. 3405 (1942) 11 SEC 194, 43 PUR(NS) 257, and 3629, June 22, 1942.

[3] Federal Trade Commission Report to the Senate, "Utility Corporations," Sen. Doc. 92, Part 72-A, 70th Cong. 1st Sess. pp. 107–110, 706–716.

[4] In 1929 and 1930, companies in the North American system transmitted 9.3 per cent and 7.7 per cent, respectively, of the total amount of electric energy transmitted across state boundaries in the United States. Federal Trade Commission Report, supra, note 3, p. 43, Table 13.

consin Electric Power Company, a holding company with subsidiaries operating an integrated electric utility system in Wisconsin and Michigan.

The other three direct subsidiaries are (1) North American Utility Securities Corporation, an investment trust; (2) West Kentucky Coal Company, which owns and operates a coal mine in Kentucky and sells coal in interstate commerce; and (3) 60 Broadway Building Corporation, which owns the office building in New York city where petitioner has its offices.

The various companies in the North American system perform a variety of functions from electric and gas service to railroad transportation, warehousing and amusement park operations. All told, they conduct business in seventeen states and the District of Columbia. Electric service alone is provided for more than 3,000,000 customers in an area of roughly 165,000 square miles.

[2] North American claims that its sole and continuous business has been that of acquiring and holding for investment purposes stocks and other securities of the subsidiaries, its relationship being essentially that of "a large investor seeking to promote the sound development of his investment." Active intervention on North American's part in the activities of these companies, it is true, has been of a limited character. Operations and operational policies, the Commission found, have been left entirely to the local managements. Nor has North American sold these subsidiaries any supplies or engineering service. This lack of active intervention, however, is indecisive. It appears to have resulted in large part from North American's satisfaction with the local managements of the subsidiaries and from the fact that the local managements have often included men selected by or historically related to North American. See Detroit Edison Co. v. Securities and Exchange Commission (1941) 39 PUR(NS) 193, 119 F2d 730, 734, 735; Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 44 PUR(NS) 97, 127 F2d 378, 383, 384. The Commission was thus warranted in considering the harmonization of local policies with those of North American as a fact, the absence of conflicts making affirmative action by North American unnecessary. But it does not follow that North American's domination of its system was any less real or effective. Historical ties and associations, combined with strategic holdings of stock, can on occasion serve as a potent substitute for the more obvious modes of control. See Southern P. Co. v. Bogert (1919) 250 US 483, 491, 492, 63 L ed 1099, 39 S Ct 533; Natural Gas Pipeline Co. v. Slattery (1937) 302 US 300, 307, 308, 82 L ed 276, 21 PUR(NS) 255, 58 S Ct 199. Domination may spring as readily from subtle or unexercised power as from arbitrary imposition of command. To conclude otherwise is to ignore the realities of intercorporate relationships. Rochester Teleph. Corp. v. United States (1939) 307 US 125, 145, 146, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754. In light of the extensiveness of North American's holdings of the securities of its subsidiaries and the penetration of local managements with men of North American back-

ground, the Commission was justified in treating North American as possessing domination over its subsidiaries or the power to dominate them when and if necessary.[5]

But North American in some respects has actually intervened in the activities of its subsidiaries. It has affirmatively participated in and dominated their financing operations.[6] So completely has it taken over the planning and handling of the various flotations of securities that North American urged before the Commission, though in vain, that the subsidiaries were incompetent to handle such matters and that it would be highly uneconomical for them to attempt to do so. As the Commission noted, the ability to dominate this financing and to control the flow, through underwriting channels, of millions of dollars of securities has been of great value and benefit to North American, in addition to being of aid to the subsidiaries. North American has also provided the subsidiaries with advisory and consultative facilities in relation to management problems; and intercompany committees have been created to serve as clearing houses for technical and accounting information.

[3] The interstate character of North American and its subsidiaries is readily apparent from the Commission's survey of their activities. North American is more than a mere investor in its subsidiaries. See Northern Securities Co. v. United States (1904) 193 US 197, 353, 354, 48 L ed 679, 24 S Ct 436. It is the nucleus of a far-flung empire of corporations extending from New York to California and covering seventeen states and the District of Columbia. Its influence and domination permeate the entire system and frequently evidence themselves in affirmative ways. The mails and the instrumentalities of interstate commerce are vital to the functioning of this system. They have more than a casual or incidental relationship. Cf. Ware & Leland v. Mobile County (1908) 209 US 405, 52 L ed 855, 28 S Ct 526; Blumenstock Bros. Advertising Agency v. Curtis Pub. Co. (1920) 252 US 436, 64 L ed 649, 40 S Ct 385; Federal Baseball Club v. National League (1922) 259 US 200, 66 L ed 898, 42 S Ct 465. Without them, North American would be unable to float the various security issues of its own or of its subsidiaries, thereby selling securities to residents of every state in the nation. Without them, North American would be unable to exercise and maintain the influence arising from its large stock holdings, receiving notices and reports, sending proxies to stockholders' meetings, collecting dividends and interest, and transmitting whatever instructions and advice may be necessary. Nor could North American maintain its

[5] As to only two of the subsidiaries, the Detroit Edison Company and the Pacific Gas & Electric Company, has a claim been raised that they were not controlled by or subject to a controlling influence of North American. The Commission rejected both claims after hearings and its determinations were sustained upon appeal. Detroit Edison Co. v. Securities and Exchange Commission (1941) 39 PUR(NS) 193, 119 F2d 730, cert. denied (1941) 314 US 618, 86 L ed 497, 62 S Ct 105; Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 44 PUR(NS) 97, 127 F2d 378, affirmed on rehearing by equally divided court (1943) 52 PUR(NS) 477, 139 F2d 298, affirmed by equally divided Court (1945) 324 US 826, 89 L ed —, 65 S Ct 855.

[6] See Federal Trade Commission Report, *supra*, note 3, p. 347.

other relationships and contacts with its own subsidiaries without the use of the mails and facilities of interstate commerce. Such interstate commercial transactions involve the very essence of North American's business. See International Textbook Co. v. Pigg (1910) 217 US 91, 54 L ed 678, 30 S Ct 481, 27 LRA(NS) 493, 18 Ann Cas 1103. They enable it "to promote the sound development" of its investments from its headquarters in New York city. In short, they are commerce which concerns more states than one. Gibbons v. Ogden (1824) 9 Wheat 1, 194, 6 L ed 23; Second Employers' Liability Cases (1912) 223 US 1, 46, 56 L ed 327, 32 S Ct 169; The Minnesota Rate Cases (1913) 230 US 352, 398, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18. As stated by this court in Associated Press v. National Labor Relations Board (1937) 301 US 103, 128, 81 L ed 953, 57 S Ct 650. "Interstate communication of a business nature, whatever the means of such communication, is interstate commerce regulable by Congress under the Constitution."

Moreover, North American concedes that four of its direct utility subsidiaries, Union Electric Company of Missouri, Washington Railway and Electric Company, North American Light & Power Company and Wisconsin Electric Power Company, transmit energy across state lines and hence are engaged in interstate commerce. It further concedes that its subsidiary West Kentucky Coal Company is engaged in interstate commerce, although contending that the remaining five direct subsidiaries are not so engaged. In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American. Electric Bond & Share Co. v. Securities and Exchange Commission, *supra*, 303 US at p. 440. They make even more inescapable the conclusion that North American bears not only a "highly important relation to interstate commerce and the national economy," *Id.* at p. 441, but is actually engaged in interstate commerce. It is thus subject to appropriate regulatory measures adopted by Congress under its commerce power.

Turning to § 11(b)(1) *supra*[7] and its constitutional impact upon North

[7] "Sec. 11(a) . . .

"(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

"(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are

American, we find that it directs the Commission to apply its provisions to holding companies engaged in interstate commerce. In essence, it confines the operations of each holding company system to a single integrated public utility system with provision for the retention of additional systems only if they are relatively small, located close to the single system and unable to operate economically under separate management without the loss of substantial economies; in addition, other holdings may be retained only if their retention is related to the operations of the retained utility properties.

These requirements of § 11(b)(1) apply only to registered holding companies. A holding company, by statutory definition, is a company that controls or possesses a controlling influence over an electric or gas utility company. Section 2(a)(7), *supra*. A holding of 10 per cent or more of the outstanding voting securities of such a utility company is presumed to be sufficient to constitute such a relationship, but this presumption may be rebutted by proof before the Commission of a lack of control or controlling influence. Accordingly, a company that is a mere investor in utility securities and that does not control or possess a controlling influence over the utility companies need not comply with § 11(b)(1).

A holding company as so defined must register and hence must obey the commands of § 11(b)(1) if it uses the mails or the instrumentalities of interstate commerce directly or through its subsidiaries in the operation of its business.[8] Thus a holding company may sell, transport, or distribute gas or electric energy in interstate commerce. Section 4(a)(1), 15 USCA § 79d(a)(1). It may use the mails or interstate commerce to negotiate or perform service, sales or construction contracts with other companies in the system. Section 4(a)(2). It may use the mails or interstate commerce to distribute or make public offerings for the sale or exchange of securities of its own or of other system companies. Section 4(a)(3). It may use the mails or interstate commerce to acquire securities or utility assets of other companies. Section 4(a)(4). It may engage in a business in interstate commerce. Section 4(a)(5). Or it may own or control securities of subsidiaries that do any of the foregoing acts. Section 4(a)(6). Moreover, § 2(a)(28)

located in one state, or in adjoining states, or in a contiguous foreign territory; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

[8] Section 4(b) compels holding companies to register if they have outstanding any security which has been distributed by the use of the mails or commerce, or offered for sale by like means, subsequent to January 1, 1925, and if that security is held on October 1, 1935, by any person not a resident of the state in which the holding company is organized. We need not here consider the force of this section, however, since North American and other interstate holding companies are forced to register by reason of the provisions of § 4(a).

defines "interstate commerce," as used in these and other provisions of the act, to mean "trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof."

By making these enumerated interstate transactions unlawful unless the holding company registers with the Commission and by extending § 11 (b)(1) to registered holding companies, Congress has effectively applied § 11(b)(1) to those holding companies that are in fact in the stream of interstate activity and that affect commerce in more states than one. Congress has further declared in § 1(c), 15 USCA § 79a(c), that all the provisions of the act, thus including § 11(b)(1), shall be interpreted to meet the problems and remove the evils connected with public utility holding companies "which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce." Section 11(b)(1) is thus clearly and unmistakably applicable to holding companies engaged in interstate commerce.

Not all holding companies that are engaged in interstate activities, however, must necessarily comply with § 11(b)(1). By the terms of § 3(a)(1), 15 USCA § 79c(a)(1), if a holding company and all of its subsidiaries are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every subsidiary thereof are organized, the Commission may grant an exemption from any provision of the act "unless and except in so far as it finds the exemption detrimental to the public interest or the interest of investors or consumers."

The power of the Commission under the "unless and except" clause of § 3(a) to deny an exemption to a predominantly local holding company does not mean, as North American urges, that a holding company having no relation whatever to interstate commerce be subjected to § 11 (b)(1) or to any other provision of the act. The Commission, in denying an exemption under this clause, is bound by the policy set forth in § 1 (c) to act so as to eliminate evils connected with holding companies "engaged in interstate commerce or in activities which directly affect or burden interstate commerce." A holding company predominantly local in character may nevertheless engage in activities affecting or burdening interstate commerce to the detriment of the public interest or the interests of investors and consumers. Only in such a case could the Commission properly deny an exemption under the "unless and except" clause.[9] This problem, however, is academic so far as North American is concerned. Like most public utility holding companies, North American is engaged in interstate commerce directly and through its subsidiaries. It can lay no claim to a predominantly intrastate character; as to it, § 3(a)(1) is wholly inapplicable. The possibility that the Com-

[9] The Commission has recognized the fact that the declaration of policy in § 1(c) must be considered in granting or denying exemptions under § 3(a) to predominantly intrastate holding companies. See Re Niagara Hudson Power Corp. Holding Company Act Release No. 5115, June 19, 1944; Re Long Island Lighting Co. Holding Company Act Release No. 5746, April 21, 1945.

mission might erroneously fail to exempt some truly local holding company from the provisions of § 11 (b) (1) cannot negative the plain fact that § 11(b)(1) was designed to apply and does apply to holding companies engaged in interstate commerce. North American is therefore subject to its terms.

[4, 5] The crucial constitutional issue, so far as the Commerce Clause is concerned, resolves itself into the query whether Congress may validly require holding companies engaged in interstate commerce to dispose of their security holdings and to confine their activities in accordance with the standards of § 11(b)(1). In urging the negative answer to this query, North American relies upon the settled doctrine that the Federal commerce power extends to intrastate activities only where those activities "so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." United States v. Wrightwood Dairy Co. (1942) 315 US 110, 119, 86 L ed 726, 62 S Ct 523. See also Santa Cruz Fruit Packing Co. v. National Labor Relations Board (1938) 303 US 453, 466, 82 L ed 954, 58 S Ct 656; United States v. Darby (1941) 312 US 100, 118, 123, 85 L ed 609, 61 S Ct 451, 132 ALR 1430; Wickard v. Filburn (1942) 317 US 111, 122, 124, 87 L ed 122, 63 S Ct 82. It is said that the ownership by North American of securities of other system companies is not in itself commerce, interstate or intrastate, and that the right to own or retain property is characteristically governed by state laws, the Federal government having no concern with such matters except as an incident to the due exercise of one of its granted powers. North American denies that the necessary relationship between the ownership of securities and interstate commerce is self-evident or that it has been found as a fact by Congress, the Commission or any court. The absence of this relationship, it is concluded, causes § 11(b)(1) to fall.

This argument, however, misconceives not only the power of Congress over interstate commerce but also the basic nature of public utility holding companies and the effect that stock ownership has upon their activities. The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies in a particular field of enterprise.[10] To be sure, other devices may be utilized to effectuate control, such as voting trusts, interlocking directors and officers, the control of proxies, management contracts and the like. But the concentrated ownership of voting securities is the prime method of achieving control, constituting a more fundamental part of holding companies than of other types of business. Public utility holding companies are thereby able to build their gas and electric utility systems, often gerrymandered in

[10] Bonbright and Means, The Holding Company (1932), p. 10; Jones and Bigham, Principles of Public Utilities (1931), p. 589; Hearings before House Committee on Interstate and Foreign Commerce, 74th Cong. 1st Sess. on H. R. 5423, Part 1, pp. 76, 77.

such ways as to bear no relation to economy of operation or to effective regulation. The control arising from this ownership of securities also allows such holding companies to exact unreasonable fees, commissions, and other charges from their subsidiaries, to make undue profits from the handling of the issue, sale, and exchange of securities for their subsidiaries, to issue unsound securities of their own based upon the inflated value of the subsidiaries, and to effect adversely the accounting practices and the rate and dividend policies of the subsidiaries. See § 1(b).[11] Congress has found that all of these various abuses and evils occur and are spread and perpetuated through the mails and the channels of interstate commerce. And Congress has further found that such interstate activities, which grow out of the ownership of securities of operating companies, have caused public utility holding companies to be "affected with a national public interest." Section 1(a).[12]

The ownership of securities of operating companies, then, has a real and intimate relation to the interstate activities of holding companies and cannot be effectively divorced therefrom. That ownership is the generating force of the constant interstate flow of reports, letters, equipment, securities, accounts, instructions, and money—all of which constitute the life blood of holding companies and allow the numerous abuses to be effectuated. It also makes the interstate transmission of gas and electricity by the subsidiaries, as well as their other interstate actions, reflect upon and magnify the interstate character of the holding companies. Without the factor of stock ownership the very foundation and framework of holding company systems would be gone and the amount of their interstate activity would be at a minimum; centralized management and control of widely scattered utility properties would be difficult if not impossible.

We may assume without deciding that the ownership of securities, considered separately and abstractly, is not commerce. But when it is considered in the context of public utility holding companies and their subsidiaries, its relationship to interstate commerce is so clear and definite as to make any other conclusion unreasonable. And Congress has plainly recognized that relationship in its declarations of policy in § 1(a), in its enumeration of abuses in § 1(b) and in

[11] The congressional findings as to abuses listed in § 1(b), were based upon some of the most exhaustive and comprehensive studies ever to underlie a Federal statute. Congress specifically referred in § 1(b) to the studies made by the Federal Trade Commission pursuant to S. Res. 83, 70th Cong. 1st Sess., the reports of the House Committee on Interstate and Foreign Commerce made pursuant to H. Res. 59, 72nd Cong. 1st Sess., and H. J. Res. 572, 72nd Cong. 2d Sess. A summary of the manifold and complex abuses revealed by these studies is contained in the Federal Trade Commission Report, *supra*, note 2. See Barnes, The Economics of Public Utility Regulation (1942) p. 71.

[12] The fact that § 1(a) refers to certain activities of holding companies as "often" occurring in or affecting interstate commerce and that § 1(b) refers to adverse effects "when" certain abuses and evils occur is but an instance of careful draftsmanship. Contrary to North American's contentions, the use of the words "often" and "when" does not imply that Congress felt that the relationships of some holding companies to commerce were negligible or that the abuses were other than general in nature. Those words merely recognize that interstate activities are not necessarily constant and that the abuses may arise from time to time. That is enough, however, to support legislative action. See Chicago Board of Trade v. Olsen (1923) 262 US 1, 40, 67 L ed 839, 43 S Ct 470.

its description of interstate activities of holding companies in § 4(a). Such statements would be utterly meaningless in the light of reality were they not premised upon the ownership of securities by holding companies and the use of that ownership to burden and affect the channels of interstate commerce.

Section 11(b)(1) is concerned with, and operates directly upon, this ownership of securities. In § 1(b)(4) Congress specifically found that the national public interest, the interest of utility investors and the interest of utility consumers are or may be adversely affected "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coördination of related operating properties."[13] The "growth and extension of holding companies" obviously rest upon their security holdings. Congress expressed in § 1(c) its determination "to compel the simplification of public utility holding company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems," thus eliminating the evil complained of in § 1(b)(4) and ameliorating the conditions specified in the other subsections of § 1(b). It accordingly adopted § 11(b)(1), whereby holding companies are compelled to intergrate and coördinate their systems and to divest themselves of security holdings of geographically and economically unrelated properties. In this way Congress, hoped to rejuvenate local utility management and to restore effective state regulation, both of which had been seriously impaired by the existence and practices of nation-wide holding company systems.[14]

The constitutionality of § 11(b)(1) under the Commerce Clause thus becomes apparent. For nearly one hundred and twenty-five years, this court has recognized that the power of Congress over interstate commerce is "the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." Gibbons v. Ogden (1824) 9 Wheat 1, 196, 6

[13] "The growth of the holding company systems has frequently been primarily dictated by promoters' dreams of far-flung power and bankers' schemes for security profits, and has often been attained with the great waste and disregard of public benefit which might be expected from such motives. Whole strings of companies with no particular relation to, and often essentially unconnected with, units in an existing system have been absorbed from time to time. The prices paid for additional units not only have been based upon inflated values but frequently have been run up out of reason by the rivalry of contending systems. Because this growth has been actuated primarily by a desire for size and the power inherent in size, the controlling groups have in many instances done no more than pay lip service to the principle of building up a system as an integrated and economic whole, which might bring actual benefits to its component parts from related operations and unified management. Instead, they have too frequently given us massive, overcapitalized organizations of ever-increasing complexity and steadily diminishing coördination and efficiency." Report of the National Power Policy Committee on Public-Utility Holding Companies, H. Doc. 137, 74th Cong. 1st Sess. p. 5.

[14] "As has been pointed out above, the purpose of § 11 is simply to provide a mechanism to create conditions under which effective Federal and state regulation will be possible. It is therefore the very heart of the title, the section most essential to the accomplishment of the purposes set forth in the President's message." S. Rep. 621, 74th Cong. 1st Sess. p. 11.

L ed 23. This is not to say, of course, that Congress is an absolute sovereign. It is limited by express provisions in other parts of the Constitution, such as § 9 of Art I and the Bill of Rights. But so far as the Commerce Clause alone is concerned Congress has plenary power, a power which "extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations." The Minnesota Rate Cases (1913) 230 US 352, 399, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18.

[6] This broad Commerce Clause does not operate so as to render the nation powerless to defend itself against economic forces that Congress decrees inimical or destructive of the national enocomy. Rather it is an affirmative power commensurate with the national needs. It is unrestricted by contrary state laws or private contracts. And in using this great power, Congress is not bound by technical legal conceptions. Commerce itself is an intensely practical matter. Swift & Co. v. United States (1905) 196 US 375, 398, 49 L ed 518, 25 S Ct 276. To deal with it effectively, Congress must be able to act in terms of economic and financial realities. The Commerce Clause gives it authority so to act.

[7] We need not attempt here to draw the outer limits of this plenary power. It is sufficient to reiterate the well-settled principle that Congress may impose relevant conditions and requirements on those who use the channels of interstate commerce in order that those channels will not become the means of promoting or spreading evil, whether of a physical, moral or economic nature. Brooks v. United States (1925) 267 US 432, 436, 437, 69 L ed 699, 45 S Ct 345, 37 ALR 1407. This power permits Congress to attack an evil directly at its source, provided that the evil bears a substantial relationship to interstate commerce. Congress thus has power to make direct assault upon such economic evils as those relating to labor relations, National Labor Relations Board v. Jones & L. Steel Corp. (1937) 301 US 1, 81 L ed 893, 57 S Ct 615, 108 ALR 1352; Polish Natl. Alliance v. National Labor Relations Board (1944) 322 US 643, 88 L ed 1509, 64 S Ct 1196; to wages and hours, United States v. Darby, supra; to market transactions, Stafford v. Wallace (1922) 258 US 495, 66 L ed 735, 42 S Ct 397; Chicago Board of Trade v. Olsen, *supra*, footnote 12; and to monopolistic practices, Northern Securities Co. v. United States (1904) 193 US 197, 48 L ed 679, 24 S Ct 436. The fact that an evil may involve a corporation's financial practices, its business structure or its security portfolio does not detract from the power of Congress under the Commerce Clause to promulgate rules in order to destroy that evil. Once it is established that the evil concerns or affects commerce in more states than one, Congress may act. "The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge." Re Rahrer

(1891) 140 US 545, 562, 35 L ed 572, 11 S Ct 865.

[8] Congress in § 11(b)(1) of the Public Utility Holding Company Act was concerned with the economic evils resulting from uncoördinated and unintegrated public utility holding company systems. These evils were found to be polluting the channels of interstate commerce and to take the form of transactions occurring in and concerning more states than one. Congress also found that the national welfare was thereby harmed, as well as the interests of investors and consumers. These evils, moreover, were traceable in large part to the nature and extent of the securities owned by the holding companies. Congress therefore had power under the Commerce Clause to attempt to remove those evils by ordering the holding companies to divest themselves of the securities that made such evils possible.

It follows that North American's contention that the ownership of securities is not in itself interstate commerce and hence may not be made the basis of Federal legislation misconceives the issue in this case. Precisely the same misconception was made more than forty years ago by the appellants in Northern Securities Co. v. United States, *supra*, 193 US at pp. 334, 335, and was rejected by this court. Inasmuch as Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution, this court in the Northern Securities Co. Case recognized that Congress may deal with and affect the ownership of securities in order to protect the freedom of commerce. Congress likewise has the power in this case.

In fashioning the remedy decreed by § 11(b)(1), Congress was following a pattern set many years ago by decisions applying the Sherman Antitrust Act, Northern Securities Co. v. United States, *supra;* Standard Oil Co. v. United States (1911) 221 US 1, 55 L ed 619, 31 S Ct 502, 34 LRA (NS) 834, Ann Cas 1912D 734; Continental Ins. Co. v. United States (1922) 259 US 156, 66 L ed 871, 42 S Ct 540, and the commodities clause of the Hepburn Act, United States v. Lehigh Valley R. Co. (1911) 220 US 257, 55 L ed 458, 31 S Ct 387; United States v. Delaware, L. & W. R. Co. (1915) 238 US 516, 59 L ed 1438, 35 S Ct 873. In so affecting the corporate structure of holding companies, it was exercising its power "to foster, protect, and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety." Dayton-Goose Creek R. Co. v. United States (1924) 263 US 456, 478, 68 L ed 388, 44 S Ct 169, 33 ALR 472. It is clear, therefore, that § 11(b)(1) is invulnerable to attack under the Commerce Clause.

[9–11] The constitutionality of § 11(b)(1) is also questioned from the standpoint of the Due Process Clause of the Fifth Amendment. North American agrues that this section, by compelling it to divest itself of its scattered subsidiaries and to confine its operations to a single integrated system, involves a taking of property without just compensation. It is also claimed that such evils as were

found to exist in public utility holding companies find an adequate remedy in other sections of the act and that § 11 (b)(1) is therefore inappropriate. Neither contention is meritorious.[15]

The taking of property is said to involve "a vast destruction of values." Reference is made in this respect to the valuable right of North American's shareholders to pool their investments and thereby obtain the benefit alleged to flow from efficient, common management of diversified interests. But Congress balanced the various considerations and concluded that this right is clearly outweighed by the actual and potential damage to the public, the investors and the consumers resulting from the use made of pooled investments. Under such circumstances, whatever value this right may have does not foreclose the protection of the various interests which Congress found to be paramount. See Northern Securities Co. v. United States, *supra*. Nor does the value of North American's contributions as a holding company to the earning power and intrinsic value of the assets divested pursuant to § 11(b)(1) bar Congress from requiring such divestment. Congress has concluded from the extensive studies made prior to the passage of the act that the economic advantages of a holding company at the top of an unintegrated, sprawling system are not commensurate with the resulting economic disadvantages. The reasonableness of that conclusion is one for Congress to determine. The fact that valuable interests may be affected does not, by itself, render invalid under the due process clause the determination made by Congress.

Moreover, there is no basis here for assuming that in limiting the scope of North American's operations there will be dispositions of securities for inadequate considerations, thereby raising a question as to whether there is a destruction of these values without just compensation. The act does not contemplate or require the dumping or forced liquidation of securities on the market for cash.[16] Under §§ 11(d) and 11(e) of the act, any divestment or reorganization plan must meet the standards of fairness and equitableness. In many instances this may involve no more than a distribution of the securities among the existing shareholders of the holding company.[17] But should securities be

[15] The contention also is made that the fact that § 11(b)(1) requires disposition of security holdings and the termination of relationships which antedate the passage of the act is fatal to its validity. But it merely requires that such holdings and relationships shall not continue in the future. There is no punishment for past events. Certainly there is no constitutional requirement that the status quo be maintained. See United States v. Trans-Missouri Freight Asso. (1897) 166 US 290, 342, 41 L ed 1007, 17 S Ct 540.

[16] "As has been explained above, the title does not require the dumping or forced liquidation of securities. Such disposition as may be necessary can be accomplished by reorganization which will equitably redistribute securities among existing security holders. In so far as there may be some redistribution of the securities of operating companies through investment banking channels, this will not result in a substantial net increase in the supply of utility securities on the market because for every block of operating securities distributed there will be a corresponding block of holding-company securities retired. The net effect of such changes will be to strengthen the market for utility securities generally by replacing holding-company securities with sound operating-company securities. Such operations, primarily of a refunding nature, should strengthen rather than weaken the credit of operating companies." S. Rep. 621, 74th Cong. 1st Sess. p. 16.

[17] North American has already disposed of its holdings of Detroit Edison Company common stock under a plan distributing the stock to North American's stockholders over a pe-

sold for cash, speculation as to unfavorable market conditions cannot undermine the validity of § 11(b)(1). Any plan of divestment or reorganization, moreover, must be carefully scrutinized by both the Commission and the enforcing court, thus enabling the assertion and protection of all shareholders' rights. See Otis & Co. v. Securities and Exchange Commission (1945) 323 US 624, 89 L ed 511, 57 PUR(NS) 65, 65 S Ct 483. And there are provisions in the Act guarding against unduly rapid divestment or liquidation.[18] In the light of such statutory and judicial safeguards and in the absence of any alleged unfair plan of divestment, we cannot say that North American's shareholders are adversely affected, from a constitutional standpoint, by the operation of § 11(b)(1). North American's reliance on such cases as Louisville Joint Stock Land Bank v. Radford (1935) 295 US 555, 79 L ed 1593, 55 S Ct 854, 97 ALR 1106, is therefore misplaced.

It is true, as North American points out, that other sections of the act provide for the regulation of many activities of holding companies and their subsidiaries, activities that were found to give birth to many of the evils about which Congress was concerned. But such sections regulate future transactions, whereas § 11(b)(1) is concerned with the existing structures of holding company systems. These structures in and of themselves have been found by Congress to constitute an evil that cannot be met by simply regulating future transactions. Congress, in the exercise of its discretion, has decided that it is necessary to reorganize the holding company structures. And inasmuch as it has the constitutional power to do so, we cannot question the appropriateness or propriety of its decision. Sunshine Anthracite Coal Co. v. Adkins (1940) 310 US 381, 394, 84 L ed 1263, 60 S Ct 907.

[12] Finally, North American claims that it has engaged in none of the evils enumerated in § 1(b) and that it should be allowed to prove that fact. The contention apparently is that § 11(b)(1), as applied to North American, is unconstitutional since none of the evils that led Congress to enact the statute are present in this instance. But if evils disclosed themselves which entitled Congress to legislate as it did, Congress had power to legislate generally, unlimited by proof of the existence of the evils in each particular situation. Section 11(b)(1) is not designed to punish past offenders but to remove what Congress considered to be potential if not actual sources of evil. And nothing in the Constitution prevents Congress from acting in time to prevent potential injury to the national economy from becoming a reality.

The judgment of the court below is accordingly

Affirmed.

Mr. Justice Reed, Mr. Justice Douglas and Mr. Justice Jackson took no part in the consideration or decision of this case.

riod of time. Re The North American Co. Holding Company Act Release No. 4056, Jan. 15, 1943.

[18] Under § 11(c), holding companies are given at least a year to comply with an order of the Commission under § 11(b). The Commission is also authorized to extend the time for an additional year upon a proper showing.

WISCONSIN PUBLIC SERVICE COMMISSION

Re People's Gas Company

CA-2231, 2-U-2073
January 11, 1946

APPLICATION *of gas utility for certificate of authority to convert to liquid petroleum gas, and investigation on Commission's motion of rates, rules, and practices of gas utility; conversion approved subject to conditions and Commission investigation dismissed.*

Intercorporate relations, § 18 — Contract with affiliate — Commission approval — Gas supply.

1. A contract with an affiliate to furnish necessary equipment and to supply liquefied petroleum gas to a gas company cannot lawfully be entered into without the approval of the Commission, which can be given only if it clearly appears and is established upon investigation that such agreement is reasonable and consistent with the public interest, p. 274.

Depreciation, § 56 — Bottled gas plant.

2. A depreciation rate of 10 per cent as part of the cost to an affiliated company supplying liquefied petroleum air gas to a gas utility was disapproved, and a depreciation rate not exceeding 4 per cent was approved, p. 274.

Intercorporate relations, § 18 — Affiliates — Cost of purchased gas.

3. The cost to a gas company of purchasing liquefied petroleum gas from an affiliated company under contract should not be in excess of what the gas would cost the gas company if it were to finance the equipment and supply itself with gas, p. 275.

Service, § 254 — Gas — Conversion to liquefied petroleum gas.

4. A company operating a water gas plant, which is in poor condition from an operating standpoint, should be authorized to convert to liquid petroleum gas, to be purchased from an affiliate, if the cost of the gas is reasonable as approved by the Commission, p. 275.

By the COMMISSION: The People's Gas Company, Marshfield, Wood county, made application on July 25, 1945, for a certificate of authority to convert to liquefied petroleum gas. At the same time the Commission instituted on its own motion an investigation of the rates, rules, and practices of the People's Gas Company of Marshfield.

APPEARANCES: Nash & Nash, Attorneys, Manitowoc, by W. J. Clark, Attorney, and Chester A. Davis, President, for People's Gas Company; Lloyd L. Felker Company, Marshfield, by Claude J. Jasper, Mad-

ison, in opposition; K. J. Jackson, Rates and Research Department, and W. M. Ketchum, Engineering Department, of the Commission staff.

The applicant has a water-gas plant at Marshfield which is in poor condition from an operating standpoint. The annual reports to the Commission by this company show that the production cost has been steadily on the increase varying from 62.73 cents per thousand of manufactured gas in 1940 to 79.7 cents per thousand in 1944. The report for 1945 will show a continuing increase.

[1] Because of its financial condition, the applicant states that it cannot finance the cost of the equipment necessary to change over to the liquefied petroleum gas and therefore proposes to enter into a contract with a newly organized affiliated company, People's Bottled Gas Company, to furnish the equipment necessary and supply the liquefied petroleum gas. The proposed contract or agreement cannot be lawfully entered into without the approval of this Commission pursuant to the provisions of § 196.52(1)(e) of the statutes which can be given only if it clearly appears and is established upon investigation that such agreement is reasonable and consistent with the public interest.

The proposed agreement provides that the People's Gas Company will pay to People's Bottled Gas Company, at the rate of 60 cents per thousand cubic feet, for the liquefied petroleum air gas at 530 BTU.

[2] Exhibit 2 shows the applicant's estimate of the cost to the People's Bottled Gas Company of supplying the gas under this agreement as follows:

Fuel Cost 5.75¢ per gallon f.o.b. Marshfield (quotation from Shell Oil Co. 5.75¢ per gallon.)		
Shell Oil Company charge for use of their storage facilities, etc.	.56¢ "	"
Total cost/gal. ..	6.31¢ "	"
		Per M Cu. Ft.
Fuel Cost (5.78 gal./C @ $.0631) ...		$0.3650
Power Cost		0.0301
Labor (part of 1 man's time)		0.0300
Misc. and Maintenance		0.0200
Unforeseen expenses		0.0549
Net production cost		$0.50
Cost of Plant $12,000		
Interest 6%	$720.00	
Depreciation 10%	1,200.00	
Insurance	200.00	
Taxes 34.00 per M	408.00	
	$2,528.00	
		Per M Cu. Ft.
Overhead charged		$0.1052
Total cost in mains		$0.6052

Note: The above shows a cost of 60.52 cents per thousand although the contract price, it is understood, is agreed at 60.0 cents per thousand; and the cost per thousand as figured on the basis of an output of 24,000,000 cubic feet of gas per year.

This exhibit shows that the cost of the liquefied petroleum gas at 5¾ cents per gallon is established by a proposition from the oil company and the storage cost of .56 cents per gallon is to cover the rental cost of storage capacity. Arrangements have been made whereby the Shell Oil Company will build a bottling plant with the necessary tanks and unloading equipment and for the use of this equipment will make this storage charge of .56 cents per gallon to the People's Bottled Gas Company. This charge appears reasonable.

The power and labor costs as well as the miscellaneous and maintenance costs as shown appear to be reason-

able. However, the item of unforeseen expenses at a cost of 5.49 cents per thousand cubic feet does not appear to be justified. With respect to the interest, depreciation, insurance, taxes, etc., the estimates appear to be in excess of the requirements. The depreciation should not exceed 4 per cent. The combination of 6 per cent return and 4 per cent depreciation on a sinking-fund basis would amount to combined interest and depreciation over a 25-year period of 7.82 per cent. This, on the investment of $12,000 would be $938 per annum compared to $1,920 shown in the estimate of the cost of furnishing the gas by the contracting company. Calculating the taxes on the present rate in Marshfield and the present assessment ratio as shown by the records in the state department of taxation, taxes would be at the rate of $29 per thousand or $348 instead of $408. The insurance item of $200 appears to be reasonable.

[3] The cost of the purchased gas to the gas company should not be in excess of what the same would cost the gas company if it were to finance the equipment and supply itself with the gas. The following analysis shows, according to our estimates, what would be the cost to People's Bottled Gas Company to supply People's Gas Company with the liquefied petroleum gas:

	Gal.
Fuel cost	$.0575
Storage cost (Shell Oil Co.)	.0056
	$.0631

	Per M Cu. Ft.
Fuel cost 5.78 gal. @ $.0631	$.3647
Power cost	.0301
Labor	.0300
Misc. and main.	.0200
	$.4448

Cost of plant $12,000		
Interest and depreciation at 7.82%	$938.00	
Insurance	200.00	
Taxes .029	348.00	
	§1,486.00	
		$.0619
Total		$.5067

Note: This cost per M cu. ft. is determined by an estimated use of 24,000,000 cubic feet per year.

The above estimates are based on a representation that the cost of the equipment necessary to furnish the liquefied petroleum air gas is to be $12,000 and an examination of the estimates by the engineering department shows that this estimate is reasonable. Therefore, an agreement whereby the People's Bottled Gas Company is to supply the People's Gas Company with liquefied petroleum gas at a cost which would not exceed 51 cents per thousand cubic feet of 530 BTU gas should be acceptable.

The change in the nature of the gas, that is, its specific gravity, will require an adjustment of all the customers' appliances and the company agrees to furnish this service at no cost to the customers.

It is understood that the water-gas equipment will be retired and only such equipment kept as will be usable with the liquefied petroleum gas.

[4] The testimony indicates without question that the company is faced with the necessity of either constructing a new water-gas or other gas plant or to substitute the use of liquefied petroleum gas. If the change in the cost of the gas to the applicant is made in the agreement as authorized herein, then since the cost of the equipment is reasonable the application should be granted.

The applicant has been applying an emergency schedule of rates which have been made effective for a one-year period. In view of the reduced cost of gas as proposed upon the substitution of liquefied petroleum gas, an investigation has been made to determine whether the emergency schedule might be terminated. Such investigation discloses that although net operating income will be improved, the applicant will not earn an excessive return. Therefore, the emergency schedule may be continued and the investigation of the rates, rules, and regulations of the applicant may be dismissed.

Finding

The Commission finds:

(1) That the substitution of liquefied petroleum air gas in place of water gas in the service of People's Gas Company at Marshfield, Wood county, is required by public convenience and necessity, subject to the conditions specified in the following certificate.

(2) That the existing rates, rules, and regulations of the applicant are not unreasonable if the same are applied to the furnishing of liquefied petroleum air gas by People's Gas Company at Marshfield under the authority of said certificate.

Conclusions of Law

1. That a certificate authorizing the substitution of liquefied petroleum air gas in place of manufactured water gas as hereinafter set forth should be issued.

2. That the instant proceeding for investigation of the rates, rules, and regulations of applicant should be dismissed.

FEDERAL POWER COMMISSION

Re Nebraska Power Company

Opinion No. 128, Docket No. IT-5954
January 24, 1946; rehearing denied March 15, 1946

APPLICATION *by power company, under § 204 of the Federal Power Act, requesting determination of question whether it is subject to Commission jurisdiction, and if so subject, for authority to issue securities; dismissed for lack of jurisdiction. Rehearing denied March 15, 1946.*

Statutes, § 19 — Construction — Ownership provision of Federal Power Act.

1. The terms "own," "owner," and "owned" in § 201(f) of the Federal Power Act, 16 USCA § 824(f), providing for exemption of certain governmental units and corporations owned by them, depend somewhat for their significance upon the connection in which they are used, and since they are not technical, but general terms, they should be liberally construed, p. 286.

Electricity, § 2 — Jurisdiction of Federal Power Commission — Governmental units — Exemption.

2. The exemption of certain governmental units and their political subdivisions and instrumentalities under § 201(f) of the Federal Power Act, 16 USCA § 824(f), discloses a congressional intent to subject private enterprise alone to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities, p. 286.

Electricity, § 2 — Jurisdiction of Federal Power Commission — Instrumentalities of governmental units — Indirect ownership.

3. The provision of § 201(f) of the Federal Power Act, 16 USCA § 824(f), extending the exemption of governmental units to cover corporations "indirectly" owned was intended to mean something more remote and indefinite than "direct" ownership, including other modes of owning than by taking legal title, and taken together the words "directly or indirectly" cover every character of proprietary interest, p. 286.

State utilities — Corporation to promote public power — Instrumentality of power district.

4. A corporation organized to acquire and operate properties under a plan for transferring the properties to public ownership was held to be a quasi public corporation and an appropriate and fitting instrumentality which a power district (a political subdivision of a state) had used in pursuance of a public power program, p. 287.

Electricity, § 2 — Jurisdiction of Federal Power Commission — Public power exemption — Wholly owned corporation — Privately owned preferred stock.

5. An electric corporation the common stock of which has been acquired by an instrumentality of a state political subdivision may be considered as "wholly owned," within the meaning of § 201(f) of the Federal Power Act, 16 USCA § 824(f), although there is preferred stock owned by the public, where it appears impossible for the preferred stockholders at any time to control the management and operation of the corporation, particularly in view of the indication by the legislative history of the act that Congress did not intend the words "wholly owned" to include ownership of preferred stock, p. 287.

Consolidation, merger, and sale, § 13 — Necessity of Commission approval — Disposition to state political subdivision or instrumentality.

6. A transaction in which a public utility, as defined in the Federal Power Act, disposes or proposes to dispose of facilities subject to the jurisdiction of the Federal Power Commission to a state, or political subdivision of a state, or an instrumentality of either, is not a transaction for which approval of the Commission is required under § 203 of the act, 16 USCA § 824b, p. 288.

Electricity, § 2 — Jurisdiction of Federal Power Commission — Corporation acquired by state instrumentality.

7. A power company, upon its acquisition by an instrumentality of a political subdivision of a state, ceases to be a privately owned corporation subject to the jurisdiction of the Federal Power Commission, pursuant to the provisions of § 201(f) of the Federal Power Act, 16 USCA § 824(f), p. 289.

Security issues, § 15 — Jurisdiction of Federal Power Commission — Corporation acquired by state instrumentality.

8. The Federal Power Commission is without jurisdiction over the issuance of securities by a power corporation which has ceased to be a privately owned corporation under § 201(f) of the Federal Power Act, 16 USCA § 824(f), by reason of its acquisition by an instrumentality of a state political subdivision, p. 289.

(OLDS, Chairman, and SMITH, Commissioner, dissent.)

APPEARANCES: John B. Dawson and W. W. Wenstrand, for the applicant; Otto F. Walter and John W. Scott, for Loup River Public Power District, Intervenor; William Ritchie, for Omaha Ice & Cold Storage, Inc. et al., intervenor; R. W. Bennett, for Massachusetts Mutual Life Insurance Company, intervenor; William T. Aitken, for Chemical Bank & Trust Company, protestant; Howard E. Wahrenbrock and Gabriel Batavia, for Federal Power Commission staff.

By the COMMISSION: This proceeding was begun June 21, 1945, on the filing by Nebraska Power Company (Applicant) of an application pursuant to § 204 of the Federal Power Act, 16 USCA § 824c, requesting the Commission to determine (1) whether applicant is subject to its jurisdiction by virtue of § 201(f) of the act, and (2) if the Commission determines that it has jurisdiction over applicant, to grant authority to issue the securities hereinafter described.

(a) The proposed bonds are to be first mortgage bonds, 3 per cent series, due 1955, in the principal amount of $7,000,000 to be dated as of May 15, 1945, to mature May 15, 1955, and to be secured by the mortgage and deed of trust of the applicant to the Guaranty Trust Company of New York and M. P. Callaway, as trustees, dated as of June 1, 1931, and indentures supplemental thereto.

(b) The proposed notes are to be serial notes in the aggregate principal amount of $7,000,000 bearing interest at 2½ per cent per annum, to be dated as of the date of issue thereof, which will be not later than December 1, 1945, to mature $125,000 on March 1, 1946, and a like principal amount at the expiration of each three months thereafter for eight additional successive instalments, and the balance, $5,875,000, to mature on January 1, 1948. The notes are to be secured by pledge of the bonds referred to in paragraph (a) above.

(c) The bonds and notes are to be issued to secure funds which, together with other available moneys in the possession of the applicant, will enable it to redeem all of its outstanding 7 per cent cumulative preferred stock and all of its outstanding 6 per cent cumulative preferred stock.

Prior to the entry of the Commission's order setting a time and place for a public hearing upon the application, the applicant was advised that its application appeared deficient, in that it made no showing in compliance with the requirements of paragraph K of § 34.2 of the Commission's Rules of Practice and Regulations, as amended, relating to underwriters' and finders' fees. At the same time

the applicant's attention was directed to the apparent noncompliance with the provisions of §§ 203 and 205 of the act and to the apparent necessity for appropriate action to restore the situation which existed before the agreement and assignment of December 26, 1944, as well as for making application under § 203 and filings under § 205 of the act.

Thereafter applicant's counsel in a letter stated that no underwriters' or finders' fees are to be paid and that it is neither appropriate nor desirable, nor is it necessary, for any questions concerning the agreement and assignment above mentioned to be submitted to the Commission.

Due notice of the filing of the application was published in the Federal Register and the Chemical Bank & Trust Company of New York, and others, filed written protests to the granting of the application.

Thereupon the Commission entered an order fixing a time and place for a public hearing respecting the matters involved and the issues presented, and also provided that applicant present evidence in support of its application and, in any event, show cause, if any there be, why the Commission should not find and determine that certain agreements hereinafter referred to, in so far as they involve the lease or disposition of facilities, and the sale, purchase, or interchange of electric energy, were subject to the requirements of §§ 203 and 205 of the act and the Rules of Practice and Regulations thereunder, and why the Commission should not issue such order with respect thereto as it might find necessary or appropriate to carry out the provisions of the act.

Following the entry of orders allowing certain interested parties to intervene, a public hearing was held in Omaha, Nebraska, before a trial examiner, which required fourteen days, during which seventeen witnesses were fully examined and 115 documentary exhibits were received in evidence. Counsel for the parties thereafter filed main and reply briefs and on October 29, 1945, the Commission heard oral argument.

We are met at the threshold of any consideration of the application for authority to issue the securities above mentioned with the question of whether the applicant and the transactions here involved are subject to our jurisdiction within the intent and meaning of § 201(f) of the act, 16 USCA § 824(f), which reads as follows:

"No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto."

A proper determination of the jurisdictional question requires a review of a rather complicated factual situation upon which the applicant bases its contention that we are without jurisdiction over the subject matter of the application for the reason that applicant is now (a) directly wholly owned by the Omaha Electric Committee, Inc. (Electric Committee), a quasi public corporation which is an

agency, authority, or instrumentality of the state of Nebraska, and (b) that applicant is now indirectly wholly owned by Loup River Public Power District, a political subdivision of the state of Nebraska.

It appears from the evidence that at the date of the hearing every privately owned and operated power company in the state of Nebraska (except the Nebraska Power Company, the applicant) had been acquired by Consumers Public Power District of Nebraska in pursuance of what is obviously a public power program of that state. Under the laws of Nebraska public power districts are political subdivisions of the state.

It further appears that such public power program of the state has been actively supported by the members of the board of directors of the intervenor, Loup River Public Power District (Loup District), that such directors actively participated in the organization of the Electric Committee and that Loup District provided the Electric Committee with the necessary funds for the purchase of all common capital stock of the applicant company.

The evidence shows also that Loup District was vitally interested in the acquisition of the applicant's properties by a public power agency so as to enable it to work out an economy flow of power with the applicant by combining the output of the applicant's steam generating plants with that of Loup District's hydroelectric plants, together with other hydro districts connected to Loup District's system.

In 1943 the legislature of the state of Nebraska passed an act known as L. B. 204, which authorized the creation of an agency to be known as the "Peoples Power Commission" for cities of the metropolitan class in the state of Nebraska. Omaha is the only city of that class in the state. The bill was drawn through the collaboration of various citizens' groups of the city of Omaha and was designed to provide a medium for public ownership of the properties of the Nebraska Power Company by a Commission composed of citizens of the territory served by the facilities of the company.

After the adoption of L. B. 204 the mayor and council of the city of Omaha took the necessary action prescribed therein for the creation of the Peoples Power Commission and named seven members thereof. The governor of the state appointed two members to the Commission from territory outside of the city of Omaha. The mayor of the city of Omaha was ex officio a member of the Commission. Such proceedings were all taken in compliance with the requirements of L. B. 204. The Peoples Power Commission so constituted opened negotiations for the purchase of the Nebraska Power Company properties. An injunction proceeding was then instituted on the ground that the Peoples Power Commission was without authority to proceed with the acquisition of the property, the Commission was enjoined from carrying its negotiations further, and the question of the constitutionality of L. B. 204 was raised. On appeal, the supreme court of Nebraska ordered the injunction dissolved but did not decide the constitutional question.

In the interim such parties (styling themselves "Power Committee") entered into a written contract with one Guy C. Myers, which recited (a) that

the Peoples Power Commission had been created under the provisions of said L. B. 204 "for the purpose of acquiring for the citizens of the city of Omaha and its surrounding territory, the property, assets, and franchises of Nebraska Power Company"; (b) that "litigation now pending in the courts questioning the constitutionality of said L. B. 204" disabled the Peoples Power Commission to proceed with such acquisition, but (c) that the "Power Committee" was desirous of proceeding as individuals and not by virtue of said L. B. 204 "to acquire the electric system (of Nebraska Power Company) for the benefit of the citizens of Omaha, and to operate same on a nonprofit basis pending a decision of the courts of Nebraska concerning the validity of the creation of Peoples Power Commission, or the establishment otherwise of a legal governmental entity to take title to the electric system and to operate same as a public agency of the state of Nebraska"; (d) that in order to accomplish the acquisition of the electric system it might be necessary for the Power Committee to organize a corporation of nonprofit or coöperative character (or to designate a bank, trust company, or other trustee) to hold the legal title to the common stock of the Nebraska Power Company, or its assets, as trustee, and to operate the electric system pending the creation of a legal public entity for that purpose; (e) that the Power Committee deemed it desirable to employ an agent for the purpose of negotiating with the owners of the electric system for the purchase of the electric system and to advise and assist the Power Committee in connection with the financing of such purchase; and (f) that Myers is the fiscal agent of various public power and irrigation districts of Nebraska "which have been negotiating through him for the acquisition of the electric system upwards of six years."

In the early fall of 1944, and before the appeal was argued before the Supreme Court, a majority of the members of the Peoples Power Commission met and discussed with certain citizens of Omaha ways and means of acquiring all of the common capital stock of Nebraska Power Company, which was then owned by the American Power & Light Company. Shortly thereafter such parties were joined in their meetings and discussions by officials and members of the board of directors of Loup District. Eventually it was found that with the active coöperation of Loup District and through the means of a nonprofit corporation the purchase of applicant's common capital stock could be financed and consummated.

Thereafter, on December 9, 1944, one of the members of such Power Committee arranged for the incorporation under Chap 55, Laws of Nebraska, 1943, of a nonprofit corporation without capital stock, named Central West Irrigation Company (Central West), and was authorized, inter alia, to purchase, lease, maintain, and operate plants and systems for the production, generation, supply, transmission, distribution, and sale of electric energy for light, heat, power, and other purposes.

Section 1 of Chap 55 of the Session Laws of Nebraska, 1943, reads as follows:

"Section 1. The terms 'non-profit

corporation' or 'corporation not organized for pecuniary profit' or 'corporation which is not organized for profit,' used in this act or the title thereof, are for all the purposes thereof herein defined as any corporation organized for the transaction of any lawful business or to promote or conduct any legitimate objects or purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and on the stock of which, if it issues stock, no dividends shall be declared or paid to the holders or owners of such stock."

On December 30, 1944, the Articles of Incorporation of Central West were amended by changing its name to Omaha Electric Committee, Inc., and its corporate purposes were amended to read, in part, as follows:

"A. The promotion of the common good and general welfare of certain municipalities and persons residing in the states of Nebraska and Iowa, including particularly the welfare of the city of Omaha and its inhabitants of the surrounding territory, by providing cheap and efficient electric service, power and heat at low prices.

"B. To acquire, own, operate, and/or control the operation, for the purposes herein stated, of properties supplying electricity to residents of the city of Omaha and surrounding territory; provided, however, if the board of directors of the corporation shall find that the ownership or control of any other properties shall be deemed advisable in connection with the ownership, operation, or control of properties supplying electricity to residents of the city of Omaha and surrounding territory or the acquisition of such ownership or control, the corporation shall be authorized to own, operate or control any such other properties. The term 'control' as herein used shall mean the control through the ownership of stock of one or more corporations owning such properties, or any other means of control deemed advisable by the board of directors of the corporation. . . ."

. . . . . .

"The board of directors of the corporation shall, notwithstanding the broad powers herein granted, conduct the affairs of the corporation for the purpose of ultimately vesting in the city of Omaha, Nebraska, or in some public agency, public body or political subdivision of the state of Nebraska the ownership and operation of properties used in supplying electric energy to the inhabitants of the city of Omaha, Nebraska, and surrounding territory. Any such transfer or any transfer of stock made for the purpose of enabling such public agency, public body, or political subdivision to acquire such properties shall be made for a consideration not in excess of an amount found necessary by the board of directors of the corporation in order to effect a retirement of all indebtedness and other obligations and preferred stock of the corporation and of corporations controlled by it, or for no consideration if no such indebtedness or preferred stock exists. If the corporation shall at the time of any such transfer own or control any properties in addition to those used in supplying electric energy to the residents of the city of Omaha and surrounding territory, it shall cause the same to be transferred or disposed of in such manner and for such consideration as

may be directed by the city, public agency, public body, or political subdivision of the state of Nebraska constituting the transferee under any such transfer. The consideration so received after payment of all expenses shall be paid to such transferee. When and as any public utility properties shall be held or controlled by the corporation after the retirement of all its obligations and those of corporations controlled by it (other than current indebtedness incurred in normal operations) and preferred stock of such controlled corporations, this corporation shall prior to the transfer thereof, as hereinbefore provided, operate such properties substantially without profit and any small profit which may accrue through such operations shall be rebated to consumers from time to time, or paid to the transferee under any transfer made pursuant to the provisions of this subdivision.

"The affairs of the corporation shall be so managed that no profit from the operations of this corporation shall inure to any officer, director or member, and no distribution shall ever be made of any of the properties or assets of the corporation to any officer or member thereof. No money shall ever be paid to the directors or officers of the corporation for services in acting as a director or officer of the corporation, except as compensation for services actually rendered, and then only to the extent approved by the majority vote of the board of directors of the corporation."

On December 11, 1944, Myers signed a contract with American Power & Light Company for the purchase and sale of the common capital stock of applicant for $14,421,000, and on the same day Myers assigned such contract to the Electric Committee.

On December 26, 1944, all interested parties gathered in New York city to consummate the transaction for the purchase of applicant's common capital stock, at which time Loup District deposited with the Electric Committee $15,600,000, being the proceeds of 30-day electric revenue notes, and from such amount the Electric Committee paid to American Power & Light Company $14,421,000 and thereby acquired in its name the legal title to all of the common capital stock of the applicant. Contemporaneously the officers and directors of Nebraska Power Company resigned and new directors were elected by the Electric Committee as owner of the common capital stock. In like manner the former officers of Nebraska Power Company resigned and new officers were appointed by the new directors of Nebraska Power Company. Such new officers were selected from the membership of the Electric Committee. On the same day a power and lease agreement was entered into between the Electric Committee and Nebraska Power Company, the latter acting through its new officials and directors, such power and lease agreement providing specifically for the assignment of such power and lease agreement by the Electric Committee to the Loup District. In the formal assignment of the power and lease agreement Loup District assumed the obligations of the Electric Committee under the power and lease agreement, and as security for Loup District's performance of the obligations under such power and lease agree-

ment Loup District deposited the sum of $15,600,000 with the Electric Committee, and Nebraska Power Company formally assented to such assignment. Such assignment also contained appropriate provisions enabling the Electric Committee to assign its interest thereunder in the event that the right, title, and interest in Nebraska Power Company should "be acquired by a municipality, political subdivision or other public instrumentality of the state of Nebraska" (therein described as "a public agency") and in such case such public agency is authorized to terminate the same by repaying to Loup District only such amount of money as will be sufficient to redeem Loup District's indebtedness then outstanding. As a further means of insuring the faithful performance of their mutual covenants the Electric Committee and Loup District entered into a written instrument of guaranty and pledge on December 26, 1944 (which recited the several undertakings of the parties), whereby the Electric Committee deposited all of the common capital stock of Nebraska Power Company so acquired by it with the Marine Midland Trust Company of New York (as trustee) as security for the performance by both Nebraska Power Company and the Electric Committee of their respective covenants in the power and lease agreement and the assignment thereof. In such instrument of guaranty and pledge the Electric Committee covenanted that it will not permit any dividends to be paid upon the common capital stock of Nebraska Power Company except to the extent of securing funds to defray the necessary operating expenses of the Electric Committee and the trustees' fees and expenses incurred thereunder.

In addition to the foregoing formal contracts between the parties, and on the same date, December 26, 1944, the Electric Committee and Loup District entered into what is termed a property disposition contract which recites that the Electric Committee desires and intends to liquidate the Nebraska Power Company and to transfer the electric utilities property of such company to public ownership by political subdivisions of the state of Nebraska and that Loup District is desirous of purchasing such public utilities property in Nebraska. The following are pertinent provisions of the property disposition contract:

"Section 1. The committee hereby warrants, covenants and agrees with the District for the benefit of the District and as a part of the consideration for the covenants and agreements herein contained to be done and performed by the District, and for the benefit of the Omaha Peoples Power Commission, the city of Omaha, and the citizens and residents of said city, that the acquisition of the common stock and properties and assets of the Nebraska Power Company is for the sole purpose of transferring the ownership, operation, and management of said properties and assets to public corporations and agencies of the state of Nebraska, and that the committee will receive no profit, benefit, or advantage to the members of the committee in, by or through such acquisition and transfer, and further covenants and agrees that this warranty, covenant, and agreement shall be enforceable by the District, the Omaha Peoples Pow-

er Commission, the city of Omaha, the state of Nebraska, or any citizen and resident of the city of Omaha, and the committee hereby waives any claim or defense of invalidity in any suit, action or proceeding which may be brought by any person, firm, or corporation, public or private, in any court, for the enforcement of this warranty, covenant, and agreement.

"Section 2. The committee agrees that it will sell to the District and the District agrees to buy from the committee all of the electric public utility properties and business and all equipment, materials, supplies, accounts receivable and appurtenances, and all assets real and personal, tangible and intangible, now formerly owned and operated by the Nebraska Power Company, and, on the closing date hereafter mentioned, then owned, directly or indirectly through the ownership of the common stock of Nebraska Power Company, by the committee, at a purchase price sufficient to enable the committee to pay off and discharge all indebtedness of the committee, or the Nebraska Power Company, existing or contingent, which may be a lien on said properties or payable directly or indirectly from the revenues and income therefrom, incurred by the committee, or the Nebraska Power Company, in connection with the acquisition of said properties by the committee, it being the intention hereof that the district shall acquire said properties from the committee without profit to the committee, and so that all unpaid liabilities of the committee incurred in the acquisition of said properties shall be discharged from the purchase price paid for said properties; provided, however, that committee may arrange to dispose of that part or portion of the Nebraska Power Company properties located in the state of Iowa prior to transfer of the properties of said company to the District, and in that event the committee shall substitute the proceeds of such sale for said properties."

. . . . . .

"Section 4. Anything to the contrary herein notwithstanding, the committee shall not be obligated nor required hereunder to transfer the distribution facilities now or formerly owned by the Nebraska Power Company located within the metropolitan city of Omaha, and such of said properties lying without the corporate limits of said city as are not an integral part of the said properties within said city, if the committee shall, within the term of this agreement, sell and convey said properties to a peoples power commission organized under L. B. 204, passed at the 1943 Session of the Nebraska Legislature, or to the city of Omaha, or to some other public agency duly organized under the laws of the state of Nebraska for the purpose of acquiring said properties for the city of Omaha or the people residing in said city."

. . . . . .

"Section 8. The closing date for the transfer of any property under this agreement shall be January 1, 1948, unless a transfer of the properties hereunder shall have been effected prior thereto under the provisions hereof."

. . . . . .

In view of the foregoing formal agreements and the provisions of the Electric Committee's charter we are satisfied that their purpose is certain

and obvious; that under no circumstances should the Nebraska Power Company be operated after December 26, 1944, on other than a nonprofit basis and for the benefit of the general public of the state of Nebraska, and that of greater Omaha in particular. We think it plain, also, that Loup District has real indirect ownership of the Nebraska Power Company by reason of the fact that all of the common capital stock is pledged as additional security for Loup District's indebtedness which was incurred so as to provide the Electric Committee with the funds to purchase the common capital stock. Such pledge insures that any default of either the Electric Committee or Nebraska Power Company in the performance of their covenants with Loup District will result in the direct operation and management of Nebraska Power Company by Loup District. Moreover, the agreements of December 26, 1944, disclose that at all times the rights of the people of greater Omaha in and to the utility properties of Nebraska Power Company, including the revenues therefrom, are fully preserved during the period that the Electric Committee and Loup District are managing and operating the utility properties and until a public power district shall have been created for greater Omaha to take over and operate the same.

Before the hearing was closed evidence was received showing that the above-mentioned L. B. 204 had been repealed in 1945 without a saving clause, and also that the Nebraska legislature was aware of the transaction which is the subject matter of this proceeding. With such knowledge the legislature amended the general statutes under which public power districts in Nebraska are organized, and it appears that under such statute as amended a new Omaha Public Power Commission has been organized and the appointment of its members has been made by the governor of the state.

It thus appears that the declared purpose of the Electric Committee and Loup District is that the applicant's utility properties will ultimately be turned over to the direct ownership and operation of a political subdivision of the state of Nebraska. It also appears that throughout the year 1945 the applicant's facilities were operated in accordance with such purpose.

The evidence shows that the course of action taken by citizens of Omaha, the Peoples Power Commission, the Omaha Electric Committee and Loup River Public Power District is well within the frame work of the settled policy of the state of Nebraska in favor of public ownership and operation of the utilities of the state.

The jurisdictional question presented for decision depends upon the ownership of the applicant corporation. Our duty is to determine first whether we have jurisdiction, and in deciding that question it is unnecessary for the Commission to take any position upon the merits of the proposed issue of securities. And regardless of what the Commission's views might be upon the merits, our duty is at an end once it is determined that we do not have jurisdiction.

[1–3] Under the facts as we have stated them, is the applicant corporation "wholly owned, directly or indirectly," by a political subdivision of a

state or by an instrumentality of such political subdivision within the meaning of § 201(f) of Part II of the Federal Power Act?

In ascertaining the congressional intent every clause, phrase, and word of § 201(f) should be considered and a meaning given to each, if possible. The terms "own," "owner," and "owned" depend somewhat for their signification upon the connection in which they are used. They are not technical, but general terms, and should therefore be liberally construed.

It is clear that § 201(f) exempts the United States and state governments, their political subdivisions, and their agencies and instrumentalities from the general provisions of Part II of the act, as well as corporations wholly owned, directly or indirectly, by any one or more of them. The exemption has been applied to sovereign governments, and their political subdivisions and instrumentalities, as distinguished from private enterprise. We think this obviously discloses a congressional intent to subject private enterprise alone to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities. The word "indirectly" extends the exemption to cover corporations wholly owned by any "agency," "authority," or "instrumentality" of the United States, any state, or any political subdivision of a state. The word "indirectly" as it appears in § 201(f) unquestionably was intended to mean something more remote and indefinite than "direct" ownership. It includes other modes of owning than by taking legal title. Taken together the words "directly or indirectly" cover every character of proprietary interest.

We think this view is supported by reference to the legislative history of the act,[1] the policy declaration in § 201(a) and the scope of other provisions of the act. It seems to us, therefore, that it is apparent that the act is a highly remedial one enacted by Congress upon consideration of and in reference to the abuses by private utilities which had been brought to the attention of Congress. Nothing in the legislative history or in the provisions of the act indicates any necessity or purpose for remedial regulation directed against sovereign governments engaged in the proprietary function of generating, transmitting, and selling electric energy.

[4] We think that in view of the charter provisions of the Electric Committee, coupled with Loup District's active and coöperative participation in the meetings, discussions and negotiations that brought about the creation of the Electric Committee, and in view also of the manner in which that committee has functioned since December 26, 1944, the Electric Committee, clearly a quasi public corporation, is an appropriate and fitting instrumentality which Loup District has used for its purposes. That it is, in fact, an instrumentality of Loup District is clearly established by the evidence.

[5] In the argument, it was contended that whatever the ownership is of the applicant corporation it is not "wholly owned" because there is preferred capital stock of the corpora-

[1] See: House Committee Hearings, pp. 383–398.

tion owned by the public; that preferred stock is evidence of ownership, and that "it is entirely conceivable that the management and control of applicant may, at times, rest in the hands of the preferred stockholders." This does not appear to be true. From a careful reading of the applicant's charter and bylaws, which are in evidence, it appears that the holders of a majority of the stock must be present in person, or by proxy, at each meeting of the stockholders. Since there are 1,000,000 shares of common stock issued and outstanding, all owned by the Electric Committee, and only 74,523 shares of preferred stock outstanding, owned by many interests, it appears impossible for the preferred stockholders at any time to control the management and operation of the applicant corporation. But what is more important is that the legislative history of the act indicates that the Congress did not intend the words "wholly owned" to include ownership of preferred stock, but intended rather the character of ownership which had been revealed to Congress as having been exercised by holding companies in their manipulations and complete domination of subsidiary corporations, notwithstanding the fact that large amounts of preferred stock were generally in the hands of the public. Cf. Re Pacific Power & Light Co. (1942) 3 FPC 329, 335, 46 PUR(NS) 131; Re Minnesota Power & Light Co. (1943) 3 FPC 388, 392, 48 PUR (NS) 1. This is also the ordinary meaning in common acceptation. We do not think it proper to seek for a special or technical interpretation. The Congress, we think, had in mind the usual understanding that the owner of the common capital stock is the owner of the corporation.

[6] It is further argued in the briefs that under the provisions of § 203 of the act the power and lease agreement required the approval of the Commission before it was executed. We think, however, that a transaction in which a public utility, as defined in the act, disposes, or proposes to dispose, of facilities then subject to the Commission's jurisdiction, to a state, or political subdivision of a state, or an instrumentality of either, would be a transaction in which such state, its political subdivision or instrumentality would be involved. It would seem that complete fulfilment of the legislative purposes of § 201(f) would require that such a transaction affecting a state, its political subdivision or the instrumentality of either should be entirely free from the requirements of § 203 of Part II of the act, which, were the sale to a private person, would impose Federal Power Commission jurisdiction, under the act, upon the sale side of the transaction. If such proposed sale were subject to the requirements of § 203, the effect would be an indirect application of a provision of Part II of the act to a state, a political subdivision of a state, or an instrumentality of either, which is inhibited by § 201(f).

We deem it our duty to give full effect to the intent of the law-making body, and not to seek, by strained reasoning, or hypertechnical interpretation, to exercise regulatory authority in a matter or field over which Congress intended we should not have jurisdiction.

It appears from the evidence that prior to the consummation of the trans-

actions of December 26, 1944, the proposed contractual arrangements between the parties was stated in writing to the Securities and Exchange Commission, and that agency determined that the proposed transactions fell within the provisions of its Rule U–44(b)(3). Section 2(c) of the Holding Company Act 15 USCA § 79b(c) is identical with § 201(f) of the Federal Power Act, 16 USCA § 824. Rule U–44 of that Commission's General Rules and Regulations relates to sales of utility securities and assets and is interpretative of §§ 12 (d) and 27(a) of the Holding Company Act. Such sections forbid the sale of utility assets except in accordance with that Commission's rules and regulations, and provide that the provisions of such sections shall not apply to any sale of utility assets to "a Federal or state government or to any subdivision, agency, authority, or instrumentality thereof." Cf. Re Western Pub. Service Co. (1941) 43 PUR(NS) 395.

[7, 8] Looking through form to substance, we conclude that, within the congressional intention and the meaning of § 201(f), Part II of the act, Nebraska Power Company ceased to be a privately owned corporation on and after December 26, 1944, and that simultaneously therewith it became directly wholly owned by Omaha Electric Committee, Inc., an instrumentality of Loup River Public Power District, a political subdivision of the state of Nebraska; that as of that date it became indirectly wholly owned by Loup River Public Power District through its instrumentality Omaha Electric Committee, Inc.; and that, therefore, the Commission is without jurisdiction over the subject matter of this proceeding. An appropriate order will be entered in conformity with this opinion.

OLDS, Chairman, and SMITH, Commissioner, dissenting: While agreeing fully with the concluding declaration in the majority opinion, that we must look "through form to substance," we are unable to accept the interpretation given to the statutory language and facts of record which enable our colleagues to hold that the transactions involved in this proceeding are exempted from our jurisdiction by the provisions of § 201(f), 16 USCA § 824(f). On the contrary, we are of the opinion that the Commission cannot properly avoid the exercise of jurisdiction and that, in the reasonable and consistent performance of its duty to examine into the merits of the proposed issuance of securities by the Nebraska Power Company and the lease of its property by assignment to Loup River Public Power District, Eastern Division, it should withhold the approval thereof.

The majority opinion seeks to make much of "the settled policy of the state of Nebraska to bring about public ownership and operation of the [electric] utilities of the state" and of the long-continued efforts of the public-spirited citizens comprising the Omaha Electric Committee to overcome all obstacles to the acquisition of the Nebraska Power Company by the public. Therefore, it should be made clear at the outset that these are not the issues but simply serve to becloud them.

This proceeding does not involve the

question whether public or private ownership is better or more desirable for Nebraska or Omaha That is a question for the people of the area, and not for the Federal Power Commission, to decide. Apparently it has been decided; and machinery has now been set up whereby, regardless of the decision herein, public ownership can be brought about in an orderly fashion through procedures, subject to public scrutiny, which have been established by the legislature. But it is not for this Commission, regardless of its views as to the merits of the objectives or the good intentions of the local group, to strain its construction of statutory language relating to jurisdiction either for the purpose of obstructing or facilitating public utility facilities from private to public ownership.

In our view it is of the utmost importance that there should be uniform interpretation of the plain language of the Federal Power Act, and not a dual standard under which jurisdiction is asserted or denied depending on whether or not public ownership may, in one way or another, be affected. In fact it could be argued with much point that to invoke such a dual standard would almost inevitably constitute a long-run disservice to public ownership.

The issue here, then, is not whether the people of Nebraska, or Omaha, shall own and operate the facilities of the Nebraska Power Company. It is, rather, whether this utility—which is still a private corporation engaged in interstate commerce—is immune from Part II of the Federal Power Act simply because certain citizens, acting in good faith but in their private capacities, desire to bring about public ownership of its property in a certain way. For the majority to confer such immunity, in our opinion, not only requires a disregard of the statutory language and of certain important factual elements, but also implies an unwarranted sanction of purely private action as an act of government.

The Jurisdictional Question

Prior to the acquisition of its common stock by the Omaha Electric Committee on December 26, 1944, the Nebraska Power Company was admittedly a public utility within the meaning of the Federal Power Act; and, as such, the issuance of securities by it and the leasing of its property were subject to the jurisdiction of this Commission under the provisions of §§ 204 and 203 respectively, of the act. It operated then, as it does now, facilities in Nebraska and Iowa for the transmission and sale, at wholesale, of electric energy in interstate commerce.[1] As a matter of fact, the company filed an original cost and reclassification study with the Commission, as is required of all public utilities, and on October 31, 1944, was directed by order of the Commission to dispose of $6,000,000 of write-ups, principally by charges to earned surplus, and almost $3,000,000 of other

[1] Electric energy generated by the company is sold under contract at wholesale in interstate commerce to the Kansas Gas & Electric Company and to the Iowa Power & Light Company. Such energy is sold and transmitted, in part, by means of facilities owned or operated by the company which are in addition to, and do not include, facilities used for the generation of electric energy, for local distribution, or for the transmission only of energy in intrastate commerce or energy consumed wholly by the transmitter.

accounting adjustments by amortization over a 10-year period. No court review of that order was sought. Indeed, the company does not now deny that it comes within the foregoing test as to status. Likewise, as a Maine corporation doing business in Nebraska and Iowa, it does not now claim exemption under § 204(f).[2]

The sole basis for the exemption sought by the company and conferred by the majority is § 201(f) which provides that:

"No provision of this Part [II] shall apply to, or be deemed to include, the United States, a state or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto."

And to make this exemption applicable it has been necessary for the majority to conclude, not only that the company is *wholly* owned by the Omaha Electric Committee, but also that the committee is an *instrumentality* of the Loup River Public Power District,[3] which is clearly a political subdivision of the state of Nebraska. We cannot see that either "strained reasoning" or "hypertechnical interpretation" is involved in the rejection of these conclusions in the light of the statutory language and a full understanding of the factual situation.[4]

The committee owns, it is true, all of the company's outstanding common stock (1,000,000 shares without par value). But 51,962 shares of 7 per cent preferred and 22,561 shares of 6 per cent preferred, both having $100 par value and full voting rights except on questions of preferred stock redemption and capital reduction, are outstanding in the hands of other stockholders. It is, in fact, the purpose of the proposed securities issue to secure funds to permit the very redemption of these preferred shares, thus accomplishing whole ownership of the company's capital by the committee. In these circumstances the conclusion that the company is *wholly*

[2] Section 204(f) exempts from the securities jurisdiction of this Commission "a public utility organized and operating in a state under the laws of which its security issues are regulated by a state Commission." It does not appear that the securities of the Nebraska Power Company are regulated in either Maine or Iowa, although the Nebraska State Railway Commission has assumed jurisdiction in this instance, Application No. 16266.

[3] Which, in the view of the majority, thereby indirectly *wholly* owns the company.

[4] Furthermore, we see nothing in the letters written by members of the staff of the Securities and Exchange Commission advising that the Omaha Electric Committee would not be required to secure the approval of that Commission to acquire the common stock of the Nebraska Power Company, and that it would not, having acquired that stock, be required to register as a holding company, which offers any rational basis of escape from our conclusion that both the securities issue and the lease of its property by the company are subject to the jurisdiction of this Commission.

Obviously each agency must arrive at its own jurisdictional conclusions on the basis of the facts before it, even though in some respects the statutory language is identical. While neither of the letters in question discloses the statutory provisions relied upon or the reasoning whereby the conclusions were reached, it appears probable that, in one instance at least, the committee may have been regarded as a "predominantly intrastate company" or a "temporary holding company" within the meaning of § 3 of the Public Utility Holding Company Act of 1935. The absence of any comparable provisions in the Federal Power Act would, in that case, make the conclusion wholly inapplicable here.

owned by the committee does not appear to be warranted.

We are not willing to assume that in deliberately using the word "wholly," when drafting a statute conferring certain limited and specific exemptions, the Congress was doing an idle thing. Yet this is just what is implied in the view adopted by the majority that the words of § 201(f) "taken together . . . cover every character of proprietary interest." Does this mean that all voting preferred stock does not represent a proprietary or ownership interest and that the holder thereof stands as an outside creditor of the corporation? We suppose not. But the ambiguity is not cleared up by the ensuing references to the legislative history of the act as a whole, unrelated, however, to the specific exemption section here under consideration.

Of course Congress was aware that holding companies could completely dominate subsidiaries, notwithstanding the fact that large amounts of preferred stock were generally in the hands of the public. Congress doubtless knew also that much less than 100 per cent ownership of the common stock ordinarily sufficed for purposes of domination or control. This Commission has repeatedly so held in scrutinizing transactions to determine their bona fide arm's-length character.[5] But those considerations, like the decisions of this Commission[6] cited in the majority opinion, related to the control, rather than to the ownership, of the corporation. We shall not, however, emphasize the matter of whole ownership further for, as we see it, the company's claim for exemption is patently defective in other, and perhaps more important, respects.

This brings us to the second conclusion of the majority necessary to sustain the finding of no jurisdiction—namely, that the committee is the *instrumentality* of the Loup River Public Power District, and therefore, indirectly, of the state of Nebraska. It is indeed a novel view that private individuals can by their own action constitute themselves agents of government.[7] It becomes the more so when, as here, the transaction undertaken by them in their private capacity was precluded to them in their official capacity by court injunction. And it is still more difficult to understand when it is realized that here they would have to be tied to the state through Loup river, which was itself at the time without legal authority to enter into the transaction directly, to the extent of acquiring electric utility facilities in Omaha. We would not have supposed that either of the public bodies concerned[8] could, with the sanction of this Commission, circumvent the legal lim-

[5] Re Safe Harbor Water Power Corp. (1935) 1 FPC 230, 237–239; Re St. Croix Falls Minnesota Improv. Co. (1942) 3 FPC 13, 19, 43 PUR(NS) 1.

[6] Re Pacific Power & Light Co. (1942) 3 FPC 329, 46 PUR(NS) 131, and Re Minnesota Power & Light Co. (1943) 3 FPC 388, 48 PUR(NS) 1, in neither of which opinions were the words "wholly owned" used in characterizing the status of the common stockholder with respect to ownership of the corporation.

[7] The Congress evidently had just this sort of situation in mind when, in the concluding clause of § 201(f) it extended the exemption to include " . . . any officer, agent, or employee of any of the foregoing *acting as such in the course of his official duty*" [but not as a private citizen]. (Italics supplied.)

[8] Loup River Public Power District and Omaha Peoples Power Commission, a majority of the members of the latter having been the principal organizers of Central West Irrigation Company, which is now, by change of corporate name, the Omaha Electric Committee, Inc.

its upon its powers by using the committee as its agent, authority, or instrumentality to accomplish by indirection what it could not do directly. Yet that is precisely what is involved here.[9]

In this situation it does not help to stress the fact that the committee is a "nonprofit" corporation or to call it a "quasi public" corporation. As heretofore emphasized, we do not impugn or question the motives of the citizens who organized the committee as a nonprofit corporation, just as many nonprofit corporations have been organized in this country to accomplish a variety of purposes; but this of itself does not make such corporations, agents, or instrumentalities of the states of their incorporation. The term quasi public corporation, on the other hand, is generally applied to privately owned public utilities. Quite obviously the term does not fit the committee, which has not been vested by the state with the usual powers of such corporations—the right of eminent domain, for example. In short, phrases and adjectives will not meet the needs of the case; the question of exemption must turn on the real relationship between the committee and Loup, and thus, under the theory of the majority, of the company and the committee to Loup and the state of Nebraska.

The majority's position that the committee is properly to be regarded as the instrumentality of Loup and that Loup indirectly owns the company, appears to be based upon the view that the history of the creation of the committee, its contract with Guy C. Myers,[10] its charter, the power and the lease agreement as assigned by the committee to Loup, and the instrument of guaranty and pledge under which the common stock of the company was deposited with the trustee (Marine Midland Trust Company of New York) all taken together, indicate that the committee, if not actually selected by Loup, at least was created with Loup's "active and cooperative participation," was subject to its influence, depended upon it for the necessary financial assistance to purchase the company's common stock, and is obligated to dispose of the company's facilities to Loup unless they have been transferred to some other duly organized public agency by January 1, 1948. We do not so interpret the facts of record.

While there can hardly be any doubt that officials of Loup were interested in the promotion of public ownership in Omaha and perhaps in effecting the contact between Mr. Myers, Loup's fiscal agent, and the Omaha citizens who created the committee, the weight of the evidence, in our opinion, shows that the committee was formed without such control by Loup as to constitute the committee an agent or instrumentality of the District. The

[9] In our judgment the subsequent dissolution of the injunction, the repeal of L. B. 204, the enactment of new legislation (L. B. 297), providing for public acquisition in Nebraska, and the organization thereunder of a new Omaha Public Power Commission—all referred to in the opinion of the majority—in no wise cures this difficulty, although it does establish a clear pattern for future action. It may be significant that the new legislation in no terms purports to make the committee the instrumentality of Loup or Loup the indirect owner of the company. On the other hand, public acquisition of the facilities of the company could, under L. B. 297, go forward by procedures which are not in any way dependent upon any of the steps which have been taken by the committee.

[10] As fiscal agent in negotiating and arranging the transactions here under review.

testimony shows that the committee selected its own members without influence from any public official or body and that the relationship with Loup was limited to "arm's length" negotiations which eventuated in the contract for the financing of the stock purchase, the leasing of some of the facilities to Loup, and the interchange of electric power and energy. There were no "side agreements." The members of the committee never regarded themselves as acting on behalf of Loup or as its agents or representatives, and never took any orders from Loup, directly or indirectly. They were sincere in their desire to act on behalf of the interests of the city of Omaha, as distinguished from outside or outstate interests, such as Loup.

In the contracts of December 26, 1944, setting forth the legal relationship between the committee and Loup, we find nothing of either form or substance which suggests any intention on the part of the parties to make the committee the agent, authority, or instrumentality of Loup. In fact, since Loup could not then lawfully have acquired the Omaha properties, it could not have constituted the committee its lawful agent or instrumentality for that purpose. And, while L. B. 297 may now permit the acquisition of such facilities, there is no evidence that any steps have been taken since its enactment to make the committee the instrumentality of Loup or Loup the indirect owner of the company.

It is stated in the majority opinion that Loup put up the money to finance the committee's purchase of the common stock of the company. This is not an adequate explanation of the facts. Actually, Myers secured an option to buy the stock from the American Power & Light Company for $14,421,000. This option he assigned to Central West Irrigation Company (later the Omaha Electric Committee, Inc.). Under his plan for financing the purchase, Loup caused a separate Eastern Division to be set up, without tangible assets, within its own organization. The company leased certain of its facilities to Central West (the committee) and agreed to sell, purchase, and interchange energy with Central West for a period of twenty-one years, paying Central West (the committee) $134,275 per month as a so-called "readiness-to-serve charge." This agreement was, as originally contemplated, assigned to Loup.

Loup caused to be issued $15,600,000 30-day 2 per cent Loup Eastern Division notes, payable exclusively from revenues to be received in the form of the "readiness-to-serve charge," the notes being secured by $15,600,000 face value of Loup Eastern Division collateral electric bonds. The $15,600,000 proceeds of the notes was deposited with the committee on the basis that such deposit was the security of the performance by Loup of obligation under the power contract which, among other things, provided for the "readiness-to-serve charge." Loup then issued $15,600,000 Eastern Division electric revenue bonds secured as above for the purpose of paying off and discharging the 2 per cent notes heretofore referred to.

To facilitate the transaction, American Power & Light agreed to subscribe and pay for $5,200,000 of the revenue bonds sold by Loup Eastern to the bankers. The committee borrowed from a bank on a one-day loan basis

the necessary funds to take up the option to purchase the stock of the company from the American Power & Light Company and used the funds supplied by Loup Eastern to pay off the bank loan. The stock of the company was pledged with the Marine Midland Trust Company to secure performance of the agreements.

Thus, it seems clear that to finance the transaction Loup has not put up any of its own funds nor has it mortgaged its property or pledged its revenues, except the "readiness-to-serve charge," amounting to $1,611,300 per annum. It is this money only that is to be used to pay off Loup Eastern's collateral trust bonds, and this money is to be paid by the company. In other words, the bonds which enabled the stock of the company to be purchased are to be liquidated out of the earnings of the company.

As to the ultimate disposition of the company's property, it should be pointed out again that the situation is not quite that portrayed by the majority opinion. Referring to the pledge of the common stock of the company as additional security for Loup's indebtedness, it is stated that this "insures that any default of either the Electric Committee or Nebraska Power Company in the performance of their covenants with Loup District will result in the direct operation and management of Nebraska Power Company by Loup District." The instrument of guaranty and pledge recites as follows, with respect to such defaults:

"In the event of default by Power in making payment of any sum or sums due under the Power contract or any amended contract, or in the event of nonpayment by Loup at maturity of the principal or interest owing on any benefited indebtedness, the trustee is hereby irrevocably authorized, after first sending a written notice to [the committee] . . ., advising that default of the character aforesaid has occurred, to sell at any time not less than fifteen days subsequent to the giving of such notice, at public or private sale, with or without notice, all or any certificates evidencing shares of common stock of Power deposited as security hereunder, and all or any shares evidenced thereby."

Thus, it will be seen that, in the event of such defaults, the common stock of the Nebraska Power Company will be sold, and such sale might result in such stock coming into the hands of private persons, conceivably even its former owner, the American Power & Light Company. Furthermore, under the so-called property disposition contract, while it is provided that the facilities of the company will be transferred to Loup unless conveyed to some other public agency by January 1, 1948, it is the committee, rather than Loup, that has the option of selecting a transferee in the interim.

Under all these circumstances, we cannot agree that the committee has been, or is, so subject to the managerial or financial control of Loup as to justify the conclusion that the former is the instrumentality of the latter, and that Loup, therefore, wholly, but indirectly, owns the company.

Merits of Proposed Securities Issue

We agree with the assertion of the majority that it is the duty of the Commission to determine the jurisdictional issue regardless of its views

as to the merits and, we might add, the objectives of the transactions in question. Since, however, we are of the opinion that the Nebraska Power Company is not exempted from our jurisdiction by the provisions of § 201(f), it seems appropriate that our views regarding the transactions themselves should be expressed, at least briefly.

The majority refers, in passing, to, but does not discuss in much detail, the power and lease agreement of December 26, 1944, under which certain facilities of the company are leased to the committee and assigned to Loup. For the reasons previously given in our discussion of the jurisdictional question, we do not think this transaction was exempted by § 201 (f) from the requirement of prior approval by the Commission under § 203 of the act. To hold with the majority would require us to over-rule a long line of unanimous decisions of this Commission extending over a period of some eight years.[11] Five of these cases, it may be added, involved dispositions of privately owned facilities to public power districts in Nebraska similar to Loup. In each of these cases the Commission asserted jurisdiction.

The "readiness-to-serve charge" against the company, which is associated with the lease, constitutes an important consideration in connection with any decision on the merits of the proposed security issue for which authorization is sought. For this charge is treated as a cost of electric energy by the company and operating expenses are thereby increased by $1,611,300 a year. In other words, this substantial sum, heretofore available to pay interest and dividends and for other corporate purposes, is now treated as an expense having a priority ahead of bond and debenture interest as well as preferred stock dividends.

The proposed issuance of notes secured by bonds to raise funds for the redemption of preferred stock seems to us unsound. In effect, the secured notes will be substituted for the preferred stock, after the payment of call premiums aggregating some $750,000 and expenses estimated at $50,000, or a total of about $800,000. While the company claims a resultant reduction of the cost of servicing its obligations amounting to some $318,000 annually, or $26,500 monthly, this would not permit the recovery of the total cost of the conversion within the life of the proposed note issue which will, by its terms, mature in its entirety by January 1, 1948. Nor is there substantial evidence to support the company's claim that the call premium is an expense which must be incurred in any event, and, therefore, is not properly to be regarded as an expense of the refunding to be weighed against the anticipated savings.

Perhaps most serious, however, is the fact that the substitution of the secured notes for the preferred stock

[11] Re Southern Nebraska Power Co. (1938) 1 FPC 711; Re Iowa-Nebraska Light & P. Co. (1938) 1 FPC 763; Re Iowa-Nebraska Light & P. Co. (1941) 2 FPC 880; Re West Coast Power Co. (1940) 2 FPC 693; Re Interstate Power Co. (1940) 2 FPC 850; Re South Carolina Utilities Co. (1941) 2 FPC 949; Re Nebraska Pub. Service Co. (1941) 2 FPC 1032; Re West Coast Power Co. (1943) 3 FPC 932; and Re California Electric Power Co. (1943) 3 FPC 1095.

In these cases, six company attorneys took the position that Commission approval of the transaction was required under § 203, or that the authority to sell was subject to Commission approval.

will amount to an inversion of the capital structure of the company. Presumably, these notes will rank with the bonds now outstanding but ahead of the $3,500,000 of outstanding debentures. The removal of the cushion from under these debentures may be legal under the security agreements, but it is not good public utility financial practice. Moreover, if the transaction is consummated, the company's capital structure will consist of more than 90 per cent of debt securities.

From the viewpoint of a private electric utility, such a situation would be most unsatisfactory. It is aggravated by the fact that the company's current position is such that, if the "readiness-to-serve charge" is not deductible for Federal income tax purposes as an ordinary and necessary business expense, it will likely be in sore straits. In other words, the situation would probably call for the husbanding of cash to the detriment of maintenance of and improvements to plant, with the likelihood of impairment of service should the situation long prevail. Finally, if for any reason default should occur on the payment of the bonds of Loup Eastern, the company's stock could be reduced to possession by the bankers, with the possibility of its reversion to its former control by the Electric Bond & Share System. It will be seen, therefore, that on its merits the proposal could hardly be approved. Certainly it would not be if the applicant were viewed simply as an ordinary privately owned electric utility subject to the jurisdiction of the Commission.

Conclusion

Some may feel that for the Commission to take jurisdiction under the act and to withhold its approval of the lease and proposed securities issue might seem like a futile thing. It may be said that these transactions could be regarded as water over the dam and that, since the company now appears to be destined for eventual public ownership, we might close our eyes, for the time being, to both form and substance—or perhaps look beyond both to such end result. This we are unable to do. As we interpret the facts and law of this case, it is the duty of the Commission to assert and exercise the jurisdiction conferred upon it by Congress. And, so far as the end result is concerned, we repeat that, according to our understanding of the facts, nothing in the disposition of this proceeding in the manner which we think proper would in any way prevent an appropriate acquisition of the company's facilities by the public under existing Nebraska procedures.

It may even be contended—as is suggested by the majority's reference to "a congressional intent to subject private enterprise along to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities"—that we are here seeking to control the actions of the public power agency in contravention of the statutory language and purpose. That is far from being the case. Obviously, the words quoted above beg the question. They assume what is to be determined, namely, that this applicant, the Nebraska Power Company, is, in fact, to be identified with the sovereign because wholly owned, directly or indi-

rectly, by an agent or instrumentality thereof.[12]

A basic and inescapable question, then, remains: Can individuals, acting in their capacity as private citizens and working through private contractual arrangements or otherwise, constitute themselves instrumentalities of an agency of the state without prior sanction through the usual legislative process, thus conferring immunity from regulation, not merely upon themselves but also upon private corporations which otherwise would unquestionably be subject to such regulation?

To ask the question would seem to be to answer it. We think the answer must be no—even where, as here, such individuals act with the best of motives. We are sure that the Congress intended no such result, and that it made its purpose plain in this respect by the final clause of the exemption provision.[13] We regard this as a fundamental matter. The necessity, in such circumstance, of proper official sanction is not just a matter of form. It runs to a sound axiom of orderly, democratic government, far transcending the limits and difficulties of the immediate situation in Omaha which is directly before us in this proceeding.

Upon consideration of the entire record herein, the Commission, having this day adopted its Opinion No. 128 which is hereby referred to and made a part hereof by reference;

The Commission finds that:

(1) Nebraska Power Company, a corporation created under the laws of the state of Maine and authorized under the laws of the state of Nebraska to do business in such state as a foreign corporation, with its principal office in Omaha, Nebraska (hereinafter mentioned as "applicant"), filed an application with this Commission on June 21, 1945, pursuant to § 204 of the Federal Power Act requesting this Commission to determine (1) whether applicant is subject to its jurisdiction by virtue of § 201(f) of the act, and (2) if the Commission determines that it has jurisdiction over applicant, to grant authority to issue the securities which are fully described in the opinion adopted herein;

(2) The applicant owns and operates facilities for the generation and transmission of electric energy. Such energy is generated within the state of Nebraska and is consumed in part within the state of Nebraska and in part at points outside thereof;

(3) From the date of its incorporation and until December 26, 1944, the applicant corporation has been owned and controlled by American Power & Light Company through the ownership of all of its common capital stock;

(4) Omaha Electric Committee, Inc. is a quasi public, nonprofit, mem-

[12] While it may be, as the majority states, that "nothing in the legislative history nor in the provisions of the act indicate the necessity or purpose for remedial regulation directed against sovereign governments engaged in the proprietary function of generating, transmitting, and selling electric energy," this also avoids the issue, for it does not mean that there was no purpose to regulate the private interests involved in selling property to a public agency. This Commission has repeatedly so held, see footnote 11, *supra*. Such sales might present potentialities of discrediting public ownership quite as serious as did the harm which sales of property, at inflated prices to holding companies during the 20's, worked to the privately owned utilities.

[13] Section 201(f) exempting " . . . any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty. . . ."

bership corporation, created without capital stock under Chap 55, Laws of Nebraska, 1943, on December 9, 1944;

(5) On December 26, 1944, the applicant corporation ceased to be privately owned. On that date by the sale, purchase, and transfer of all its common capital stock, it became and presently is directly wholly owned by Omaha Electric Committee, Inc. Since December 26, 1944, Omaha Electric Committee, Inc., has in fact been and now is an instrumentality of Loup River Public Power District;

(6) On December 26, 1944, the applicant corporation became and now is indirectly wholly owned by Loup River Public Power District, a political subdivision of the state of Nebraska, through its instrumentality, Omaha Electric Committee, Inc.;

(7) Upon the foregoing the Commission is without jurisdiction over the subject matter of this proceeding.

The Commission *orders* that the proceeding be dismissed for want of jurisdiction.

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA

Chenery Corporation et al.

v.

Securities and Exchange Commission

No. 8977

Federal Water & Gas Corporation

v.

Securities and Exchange Commission

No. 8978
— US App DC —, — F2d —
February 4, 1946

REVIEW *of order of Securities and Exchange Commission denying participation by officers and directors on a parity with other stockholders in a reorganization plan; reversed. For earlier decisions in this case, see (1943) 318 US 80, 87 L ed 626, 47 PUR(NS) 15, 63 S Ct 454, remanding case on review of (1942) 75 US App DC 374, 44 PUR(NS) 138, 128 F2d 303.*

Appeal and review, § 28.1 — Scope of review — Commission decision after remand.

1. The only question open on review by the United States court of appeals of an order of the Securities and Exchange Commission, after remand of a prior order by the Supreme Court for further proceedings not inconsistent with its opinion, is whether the Commission has rightly construed and rightly followed the opinion of the Supreme Court; and it is the duty of the court to make its own interpretation of the opinion, although the Supreme Court can itself best answer the question, p. 302.

Corporations, § 22 — Reorganization — Participation — Officers and directors — Dealing in corporation stocks.

2. The action of the Securities and Exchange Commission in refusing to permit officers and directors to participate in a reorganization on the same basis as other holders of preferred stock, because they acquired the stock while reorganization plans were before the Commission, is not a permissible exercise of administrative discretion entrusted to the Commission by Congress, where the integrity of such officers is not at issue, the purpose of their stock acquisition was to preserve an interest in the company, and it is conceded that the transactions were accomplished without ulterior purpose and without unfair or inequitable results to persons affected by the reorganization plan, p. 302.

Corporations, § 10 — Discretionary power of Commission — Reorganization under Holding Company Act.

3. Section 11(e) of the Holding Company Act, 15 USCA § 79k(e), does not confer upon the Securities and Exchange Commission a purely discretionary power in reorganization proceedings, not subject to judicial review, p. 305.

Corporations, § 10 — Powers of Securities and Exchange Commission — Reorganization.

4. The words "notice and opportunity for hearing" in § 11(e) of the Holding Company Act, 15 USCA § 79k(e), providing for Commission approval of a reorganization plan, if after notice and opportunity for hearing the Commission finds the plan necessary and fair and equitable, cannot be held to erect a standard of judgment so indefinite as to confer unlimited powers, but rather to impose and require quasi judicial action, p. 305.

Procedure, § 30 — Basis for finding.

5. A reasoned conclusion must be based on evidence, and may not be pitched alone on unresolved doubts, nor upon weaknesses or selfishness which a Commission believes is inherent in human nature, p. 305.

Corporations, § 16 — Reorganization — Participation by officers and directors — Absence of prohibitive rule.

6. In the absence of a rule of general application promulgated by the Securities and Exchange Commission forbidding officers and directors of a corporation in process of reorganization from dealing in securities of a corporation during the pendency of proceedings before the Commission, transactions in themselves fair and just and honest and in accord with traditional business practices, not condemned by law, may not properly be outlawed or denied their ordinary effect, p. 308.

APPEARANCES: Spencer Gordon, with whom Mrs. Virginia Collins Duncombe was on the brief, for petitioners in No. 8977; Allen S. Hubbard for petitioner in No. 8978; Roger S. Foster, Solicitor, Securities and Exchange Commission, for respondent.

Before Groner, CJ., and Clark and Wilbur K. Miller, JJ.

GRONER, CJ.: This is a petition for the review of an order of the Securities and Exchange Commission, issued February 7, 1945, under the Public Utility Holding Company Act. The same case was here in 1942.

A brief statement of proceedings on the first appeal may be helpful in understanding the question now presented for decision.

In 1937 Federal Water Service Corporation, hereafter called "Federal," a Delaware holding company, owning securities of subsidiaries operating water, gas, electric, and other properties, filed a plan of voluntary reorganization with the Commission under §§ 7 and 11 of the Holding Company Act of 1935.[1] The plan contemplated simplification of the corporate structure and the elimination of existing capital deficits by a reduction of capital which would permit Federal to resume payment of dividends. Subsequently, two additional plans were filed, but were ultimately withdrawn largely on objection by the Commission's staff.

In March, 1940, Federal, as the result of a then recent Delaware supreme court decision, filed a new plan of merger, which, with modifications, was approved by the Commission. The new plan, as modified, contained no provision for participation by Class B stock of Federal—which the Commission had found to be without value. Instead, that stock was to be surrendered for cancellation and only Class A common and all issues of preferred were to be converted into common stock of the new corporation.

Petitioners, who were officers and directors of Federal, held a one-third interest in Utility Operators Company, and that company in turn had virtual control of Federal through the ownership of Federal Class B common stock, representing 43 per cent of voting power. During the period the various plans of reorganization were before the Commission, petitioners purchased Federal's preferred stock to the total amount of 12,467 shares. The purchases were made in the open market, at current prices, from time to time over the 3½-year period during which the negotiations with the Commission's staff were in progress. All of the purchases were made individually, and, except as to Chenery and van den Berg, averaged around 130 shares per individual. Chenery, for the account of a family corporation controlled by him, acquired approximately 8,000 shares, 2,700 shares of which he obtained for $100,000 of Federal's gold bonds in an exchange arrangement with a banking syndicate; and van den Berg, who at the time of final action by the Commission had ceased to be a director of the corporation, purchased in the open market approximately 1,700 shares. If the stock so acquired had been converted into common stock of the new corporation, under the plan as finally approved by the Commission, petitioners stood to re-

[1] 15 USCA §§ 79g, 79k.

ceive 79,077 shares of new common, having a par and probable market value (as determined by the Commission) of $5 per share, or an aggregate value of $395,385, in return for the preferred stock which cost petitioners $328,347, a difference of little more than the amount of interest lost in holding the preferred shares pending completion of the plan. The common stock which petitioners (including Chenery Corporation and van den Berg) would thus have received, if their preferred stock had participated in the new corporation, would have represented 7.4 per cent of the total voting power in the new corporation. In addition, petitioners, individually, had acquired 6.500 preferred shares of Federal prior to the filing of any plan of reorganization which when converted would have represented 2.7 per cent of the total voting power. Added together, petitioners stood to hold 10.1 per cent of the voting power of the reorganized corporation.

The Commission on March 24, 1941, 8 SEC 893, 41 PUR(NS) 321, made formal findings on the basis of which it concluded that the plan could not be approved insofar as it provided participation of the preferred shares purchased by petitioners during the period reorganization plans were before the Commission, even though the purchases were made honestly, after full disclosure and at a fair price at public sale. The Commission based its conclusion on its holding that during the pendency of proceedings before the Commission, officers and directors of the corporation occupied a fiduciary relationship to the corporation and to its shareholders, and consequently were subject to the limitations imposed upon fiduciaries in dealing with trust property. Accordingly, on July 1, 1941, an amendment to the plan was submitted by Federal, over petitioners' protest, whereby the stock so purchased would not be converted into common stock of the new corporation, but would be surrendered to the corporation at cost plus 4 per cent interest.

The plan as amended was approved September 24, 1941, 10 SEC 194, 200, 41 PUR(NS) 361.

On petition to us to review, we reversed and remanded for further proceedings in conformity with our opinion (Chenery Corp. v. Securities and Exchange Commission [1942] 75 US App DC 374, 44 PUR(NS) 138, 128 F2d 303). Certiorari was granted and on February 1, 1943, the Supreme Court handed down an opinion directing us to remand to the Commission for further action not inconsistent therewith (Securities and Exchange Commission v. Chenery Corp. 318 US 80, 87 L ed 626, 47 PUR(NS) 15, 63 S Ct 454). On rehearing no new or additional evidence was adduced and in February, 1945, the Commission reaffirmed its former order.

The case is now again before us pursuant to § 24(a) of the act, 15 USCA § 79x(a).

[1, 2] It should be borne in mind that on the previous appeal the Commission conceded that the transactions of which we have spoken were accomplished without ulterior purposes and without intent on petitioners' part to profit personally in the consummation of the plan, likewise held that honesty, full disclosure, and purchase at a fair price at public sale characterized the transactions, and concluded that the

result was neither unfair nor inequitable to the persons affected by the plan.

Accordingly, we had then, as we have now, a case in which there is not one jot or title of evidence tending to contradict petitioners' declared purpose in the purchase of preferred stocks to be the transfer of their interest from one class, declared by the Commission to be worthless, to another with voting rights, in order that to some extent they might make, as they thought, a safe investment and at the same time preserve some interest in a company to which they had devoted a considerable part of their business lives.

The Supreme Court subsequently held, as we had held, that the Commission's order on this record could not be sustained, but presumably, in order that the Commission might reconsider the case, in the light of the standards imposed by the act, directed us to remand the cause to the Commission for further proceedings not inconsistent with its opinion. This action is in line with the Supreme Court's statement in the Pottsville Case,[2] that an administrative determination open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy. Considered in this view, obviously, the only question now open is whether the Commission has rightly construed and rightly followed the opinion of the Suprme Court. That the Supreme Court can itself best answer this question goes without saying; but in the meantime it is our duty—which we may not escape by certification—to make, in the light of its content, our own interpretation of the opinion. As preliminary to this, it seems to us clear that the Supreme Court's rejection of the Commission's original order was primarily because it was not sustainable on the grounds on which the Commission based its action,—that is to say, the Commission having affirmatively found that petitioners' purchases of stock were in all respects fair, honest and aboveboard, resulting neither in unjust enrichment to themselves, nor harm to other stockholders or the public, such purchases were not subject to proscription on any ground relied upon by the Commission. And, as sustaining this, the Supreme Court said: "Congress itself did not proscribe the respondents' purchases of preferred stock in Federal. Established judicial doctrines do not condemn these transactions. Nor has the Commission, acting under the rule-making powers delegated to it by § 11(e), promulgated new general standards of conduct." The Commission, the Supreme Court said, dealt with this as a specific case, and not as the application of a general rule of conduct for reorganization managers, and as explanatory of this added: "Had the Commission, acting upon its experience and peculiar competence, promulgated a general rule of which its order here was a particular application, the problem for our consideration would be very different." (318 US at pp. 92, 93, 47 PUR(NS) at p 23.)

In this aspect, then, the immediate question is whether the Commission's

[2] Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 145, 84 L ed 656, 33 PUR(NS) 75, 60 S Ct 437.

action in again outlawing petitioners' purchases of stocks, considered in the light of the Supreme Court's opinion, is a permissible exercise of administrative discretion entrusted to it by Congress. We are of opinion that its action cannot be sustained on that ground. The Commission, adhering to its original conclusion, stated its interpretation of the Supreme Court's directive in these words: "As we understand the opinion of the Supreme Court, our determination of 1941 in this case was held to be unsupported by certain equity precedents on which we relied. And as we construe the Supreme Court's mandate we are directed to reëxamine the case to decide on the facts, viewed in the light of that conclusion of the court, whether our special experience in administering the legislative policy of the act indicates a necessity for reaffirming our previous determination or whether, instead, our earlier ruling should be modified."

Proceeding on this theory, the Commission declared that the problem is not a question of prescribing a standard of conduct generally applicable to trading "by corporate officers, directors and large stockholders," and expressly declined to adopt a rule applicable in such cases. The Commission says that "without flexibility" such a rule might itself "operate unfairly." It accordingly held that its decision must turn *first,* upon an affirmative finding by it that the plan was fair and equitable within the meaning of § 11(e); *second,* that it was not detrimental to the interest of investors and consumers under § 7(d)(6); and *third,* that it would not result in an unfair distribution of voting power under § 7(e), and concluded that if the record left it with "undispelled doubts" on the first question, the plan should be proscribed, "even if we (it) made no affirmative finding" in relation to the two other questions. Having reached this conclusion, the Commission, after citing instances in which, in the reorganization of corporations, "management" had availed of opportunities, or temptations, afforded by such proceedings to obtain personal advantage or gain, says that questions of " 'honesty, full disclosure, and purchase at a fair price,' traditionally applied to dealings in normal course between corporate managers and stockholders, cannot be the controlling tests. . . ." And on this basis the Commission reaffirmed its decision that petitioners' preferred stock must be placed on a different footing than that of other stockholders, saying:

"We are led to this result not by proof that the interveners committed acts of conscious wrongdoing but by the character of the conflicting interests created by the interveners' program of stock purchases carried out while plans for reorganization were under consideration. Doubts, inevitably suggested by the existence of these conflicting interests, remain unresolved and prevent an affirmative finding of fairness and equity under § 11(e).

"The existence of such conflicting interests, and the persistence of unanswered questions they generate, similarly furnish the basis for a finding that component elements of the plan, . . . would be 'detrimental' within the meaning of §§ 7(d)(6) and 7(e)."

The Commission's present view in no substantial respect differs from its original view except that then the Commission grounded its decision "on principles of equity derived from judicial decisions," whereas now it attempts to sustain its position on what it calls its special experience in administering the legislative policy of the act.

The Commission's position actually amounts to neither more nor less than a definite holding that purchases of stock of a corporation in process of reorganization are unlawful, when made by officers or employees of the corporation,—and this without regard to any factor of good or bad faith, or any other factor which might impute special knowledge, secret information, or indeed anything tending to show a lack of bona fides in the transaction. For, as we have seen, the Commission expressly says the integrity of interveners in the respects in which they acted is not at issue. And as to this latter statement, in passing, we may properly observe that it cannot be, for the Commission has put that issue out of the case by its previous admission on the same facts that "honesty, full disclosure, and purchase at a fair price" characterized the transactions. In practical effect, therefore, the Commission now insists upon doing precisely what the Supreme Court said it could not do; that is to say, in applying to this specific case a standard which has never been promulgated, either by the Commission in its regulations or by legislative act, and which the Commission says cannot fairly be generally applied.

Considered in this view, we think that the Commission has failed to interpret correctly the limits prescribed for its guidance by the Supreme Court. It is true, as the Commission now asserts, that the Supreme Court recognizes that the act and its provisions confer upon it broad powers for the protection of the public and that this authority was intended to be responsive to the demands of the particular situations with which the Commission might be faced. But it is also true that the court recognized that the Commission, like the ocean, has its appointed bounds, and lest it break through its limits and engulf a continent,—spoke these words of caution: "The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the act." (318 US at p 94, 47 PUR(NS) at p 24). And the court added this further caution that the grounds upon which the administrative agency acts must be clearly disclosed and adequately sustained.

[3–5] But the Commission has made no additional findings and disclosed no additional considerations to justify its adherence to its former order. In short, its attitude seems to be that § 11 (e) of the act,[3] confers

[3] Section 11(e): "In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company . . . may . . . submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company . . . for the purpose of enabling such company . . . to comply with the provisions of subsections (b). *If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate*

a purely discretionary power not subject to judicial review. But we are referred to nothing and can find nothing in the act to sustain this view. Nor is it sustainable on the theory of congressional intent, for as we pointed out in our earlier opinion, the Senate Committee's report on submission of the bill declared that the authority of the Commission must be administered within the well-defined limits of the act; and the act itself certainly confers no such grant of general power.

Section 11 (e), which delineates the Commission's power, reads in part—

"If, after notice and opportunity for hearing, the Commission shall find such plan . . . necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan . . ."

The words of the section—"notice and opportunity for hearing," cannot, we think, be held to erect a standard of judgment so indefinite as to confer unlimited powers, but rather to impose and require quasi judicial action. And as Mr. Justice Brandeis said of similar authority conferred by § 5 (2) of the Act to Regulate Commerce—[4]

"Upon application of a carrier, the Commission must form a judgment whether the acquisition proposed will be in the public interest. It may form this judgment only after hearing. The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

That such a limitation is obviously necessary was recently emphasized by the Supreme Court in the Pottsville Case,[5] in which Mr. Justice Frankfurter said:

"To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play. They require that interested parties be afforded an opportunity for hearing and that judgment must express a reasoned conclusion."

Certainly, a reasoned conclusion must be based on evidence, and may not be pitched alone on unresolved doubts, nor upon weaknesses or selfishness which the Commission believes is inherent in human nature. The construction advanced by the Commission would permit it to exercise a power of disapproval free of judicial review, and the notice and hearing required by the statute would become an empty form. The Commission, free of the inhibitions imposed by the particular facts, would be left

the provisions of subsection (b) and *fair and equitable to the persons affected by such plan*, the Commission shall make an order approving such plan. . . ." (Italics added.)

[4] Chicago Junction Case (Baltimore & O. R. Co. v. United States [1924]) 264 US 258, 265, 68 L ed 667, 44 S Ct 317. See also Shields v. Utah Idaho C. R. Co. (1938) 305 US 177, 83 L ed 111, 59 S Ct 160; Consolidated Edison Co. v. National Labor Relations Board (1938) 305 US 197, 230, 83 L ed 126, 26 PUR (NS) 161, 59 S Ct 206; Myers v. Bethlehem Shipbuilding Corp. (1938) 303 US 41, 48, 82 L ed 638, 58 S Ct 459; Anniston Mfg. Co. v. Davis (1937) 301 US 337, 345, 81 L ed 1143, 57 S Ct 816; St. Joseph Stockyards Co. v. United States (1936) 298 US 38, 51, 80 L ed 1033, 14 PUR(NS) 397, 56 S Ct 720; Interstate Commerce Commission v. Louisville & N. R. Co. (1913) 227 US 88, 90, 57 L ed 431, 33 S Ct 185.

[5] *Supra*, Note 2, 309 US atp. 143, 33 PUR (NS) at p. 80.

to roam the widest possible area of authority influenced and impelled only by its own doubts.

Thus considered, it is apparent that the Commission has made its present order without reliance upon such evidence or findings as would warrant our affirmance. Compare National Labor Relations Board v. Columbian Enameling & Stamping Co. (1939) 306 US 292, 299, 83 L ed 660, 59 S Ct 501. In no respect, as we have said, has the Commission made the findings to support the present order as appropriate to effectuate the policies of the act, or to show that petitioners' actions were other than fair and equitable, or that their participation in the merger scheme would be detrimental to the public interest or to the interest of investors or consumers. In laying down, as it does, a rule of fiat unassociated with the facts in this case, the Commission has strayed from the course laid out and charted by the opinion of the Supreme Court, and accordingly we must refuse to give it effect.

Mr. Justice Frankfurter, who spoke for the Supreme Court, and whose language we have previously quoted in recognition of the broad powers of the Commission, said of the Commission's former order:[6]

". . . Whether and to what extent directors or officers should be prohibited from buying or selling stock of the corporation during its reorganization, presents problems of policy for the judgment of Congress or of the body to which it has delegated power to deal with the matter. Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibitions unconcerned with the fairness of a particular transaction. *But before transactions otherwise legal can be outlawed or denied their usual business consequences, they must fall under the ban of some standards of conduct prescribed by an agency of goverment authorized to prescribe such standards*—either the courts or Congress or an agency to which Congress has delegated its authority. Congress itself did not proscribe the respondents' purchases of preferred stocks in Federal. Established judicial doctrines do not condemn these transactions. Nor has the Commission, acting under the rule-making powers delegated to it by § 11 (e), promulgated new general standards of conduct. It purported merely to be applying an existing judge-made rule of equity. The Commission's determination can stand, therefore, only if it found that the specific transactions under scrutiny showed misuse by the respondents of their position as reorganization managers, in that as such managers they took advantage of the corporation or the other stockholders or the investing public. The record is utterly barren of any such showing. Indeed, such a claim against the respondents was explicitly disavowed by the Commission." (Italics added.)

This language, we think, is equally applicable to the present order, for it is clear now, as it was before, that the Commission has *prescribed* no fixed standards of conduct which would ban the stock purchases in question, nor promulgated before or since any

[6] Securities and Exchange Con nission v. Chenery Corp. (1943) 318 US 80, 92, 87 L ed 626, 47 PUR(NS) 15, 23, 63 S Ct 454.

rule applicable thereto, but, on the contrary, has declined to adopt standards or promulgate a rule, on the ground that no rule or standard which would be fair and equitable in all cases can be made. Certainly, then, it would seem to us to follow that in a case in which the Commission points to no fact challenging good faith, suggests no betrayal of a fiduciary duty, and hints at no use of inside or confidential information, a holding of illegality is not responsive to the Court's conclusion that "The Commission's determination can stand, therefore, only if it found that the specific transactions under scrutiny showed misuse by the respondents of their position as reorganization managers, in that as such managers they took advantage of the corporation or the other stockholders or the investing public." It may well be, as the Supreme Court suggests, that the Commission's fact-finding functions are like those of a jury. But nothing is more positively imbedded in our law than the principle that a jury may not guess or speculate in deciding facts. Certainly, neither in a court nor before a Commission can an unsupported suspicion sustain a decision.

[6] In nothing we have said do we wish to be understood as expressing any opinion as to the right of the Commission under its broad powers to promulgate a rule of general application forbidding officers and directors of a corporation in process of reorganization from buying—and perhaps also from selling—securities of the corporation during the pendency of proceedings before the Commission. That question is not present in this case. What we do say is that, without such a rule, of which notice is given so that all may know of its existence, transactions in themselves fair and just and honest and in accord with traditional business practices, and which "Congress itself did not proscribe," and which "judicial doctrines do not condemn," may not properly be "outlawed or denied" their ordinary effect.

But here the Commission's position goes beyond the mere question of the necessity of a rule. It insists upon an absolute right to approve in one case and to refuse to approve in another. It says, quite frankly, that it would be inappropriate to condemn a transaction such as we have here in a case in which the cost of the security purchased was in excess of its reorganization value; and again that it might be inconvenient to apply it if to do so would embarrass the corporation's finances. These are but instances which demonstrate its claim to unfettered discretion, irrespective of adequate findings based upon a fair appraisal of the evidence. Nothing that we find in the opinion of the Supreme Court warrants such a conclusion and nothing could be more directly in conflict with the terms and spirit of the law.

Reversed.

Re California Water Service Company

Decision No. 38275, Application No. 26924
October 2, 1945

APPLICATION *by water utility company for authority to issue stock; granted.*

Security issues, § 82 — Exchange of preferred stock — Common stock sale to present holders.

1. Authorization was granted for the issuance and sale of preferred stock, at a lower dividend rate, in exchange for outstanding shares of preferred stock and for the issuance and sale of common stock to present holders of outstanding common stock to finance the cost of additions and betterments, p. 309.

Accounting, § 30 — Premium on sale of stock — Expenses.

2. A company authorized to sell common stock was permitted to credit the premium to be received from its sale to "Paid-in Surplus" and to charge to that account the expenses applicable to issuance and sale, p. 312.

Accounting, § 21 — Underwriter's fee or compensation — Expense of refunding — Premium.

3. A company authorized to issue preferred stock in exchange for outstanding preferred stock, under a plan for payment of compensation to underwriters, was permitted to charge to earned surplus the fee or compensation and also the expenses of redeeming the presently outstanding preferred stock, of issuing and selling the new preferred stock, and of amending its articles of incorporation, it being proposed to offset the cash redemption premium to be paid on shares of outstanding stock against an equal amount of premium to be realized from the sale of the new stock, with the result that such new stock would stand on the books at its par value with no additive amount for premiums realized on its sale, p. 312.

Security issues, § 112 — Sale to present stockholders — Competitive bidding.

Discussion, in dissenting opinion, of the propriety of selling new shares of common stock to present common stockholders at a price below market quotations without competitive bidding, p. 314.

(CLARK, Commissioner, dissents.)

APPEARANCES: McCutchen, Thomas, Matthew, Griffiths & Greene, by Henry D. Costigan, Hazel Flagler, and Owen Jameson, for applicant.

By the COMMISSION:

[1] In this application, California Water Service Company asks the Railroad Commission for an order author-

izing it to issue not exceeding 139,000 shares of its preferred stock of series C, 4.4 per cent, of the par value of $25 each and of the aggregate par value of $3,475,000, in exchange for all, or any part, of its presently outstanding 139,000 shares of preferred stock of series A and series B, 6 per cent, on a share for share basis; to sell, at not less than $26.25 a share, such number of said 139,000 shares of series C stock as may not be required to meet conversion requests of the presently outstanding shares of preferred stock and to use the proceeds to pay and redeem the presently outstanding shares of preferred stock which are not surrendered by their holders for series C stock; to issue and sell, at $30 a share, not exceeding 29,142 shares of its common stock of the par value of $25 a share and of the aggregate par value of $728,550, for the purpose of reimbursing its treasury and of financing the cost of additions and betterments, and to account for premiums, fees, and compensation to underwriters and other expenses in the manner hereinafter set forth in this opinion.

As of July 31, 1945, applicant reports its assets and liabilities as follows:

Assets

Plant, property and rights, etc.	$22,883,724.67
Investments in other companies	2,001.00
Cash in banks and on hand	313,305.96
U. S. treasury savings notes	65,000.00
Accounts receivable (less reserve—$12,179.50)	247,033.06
Materials and supplies (less reserve—$10,353.48)	239,178.92
Miscellaneous special deposits	41,618.06
Prepaid taxes, insurance, etc.	27,461.31
Unamortized bond premiums, discount, expense	437,009.13
Miscellaneous deferred charges	46,427.25
Total	$24,302,759.36

Liabilities

First mortgage 4% bonds, series B, due May 1, 1961	$11,882,000.00
Accounts payable	146,533.19
Accrued liabilities	572,626.16
Unearned revenue	35,154.50
Dividends accrued on preferred stock	43,437.50
Consumers' meter deposits	32,290.72
Consumers' extension deposits	278,437.96
Reserves	4,028,245.88
Contributions for extensions	358,367.87
Preferred stock (139,000 shares)	3,475,000.00
Common stock (116,568 shares)	2,914,200.00
Surplus	536,465.58
Total	$24,302,759.36

By Decision No. 38157, dated August 28, 1945, the Commission authorized California Water Service Company to issue and sell at 107 per cent of their face amount and accrued interest from November 1, 1945, $11,282,000 of first mortgage 3¼ per cent bonds, series C, due November 1, 1975, and $600,000 of serial notes (average interest rate 1.9 per cent) to pay and redeem the 4 per cent bonds referred to in the preceding balance sheet.

The company reports its operating revenues at $3,393,640 during 1943, at $3,648,465 during 1944, and at $2,157,330 during the first seven months of 1945. Its net income available for dividends is reported at $568,098 for 1943, at $504,683 for 1944, and at $265,629 for the seven months ending July 31, 1945. It has paid regular dividends on its preferred stock at the rate of 6 per cent per annum, and on its common stock, during the last five years, at 10.35 per cent in 1940, at 9.28 per cent in 1941, at 6.90 per cent in 1942, and at 8 per cent in 1943 and 1944.

The outstanding preferred stock is nonparticipating but is preferred as to assets and cumulative dividends at the

rate of 6 per cent per annum. The holders of the shares of such stock have the right to convert them into shares of applicant's preferred stock of series C, 4.4 per cent, on a share for share basis at any time up to the close of business on November 9, 1945. The stock is redeemable at the option of the company upon thirty days' notice at 105 per cent of par value plus accrued dividends, that is, at $26.25 a share plus accrued dividends.

Applicant has decided to take steps to retire its outstanding 6 per cent preferred stock. It proposes to offer 139,000 shares ($3,475,000 par value) of its preferred stock of series C, 4.4 per cent, to the holders of the 139,000 shares of its preferred stock of series A and series B, 6 per cent, in exchange, on a share for share basis. It further proposes to sell to an underwriting group such portion of said 139,000 shares of series C stock which is not so issued in exchange for series A and series B stock, at $26.25 a share and to use the proceeds to redeem, on November 15, 1945, the shares of series A and series B stock not exchanged by their holders for the new series C stock. The company's officers estimate annual savings of approximately $46,000 as a result of this transaction.

There has been filed as Exhibit 3, a copy of a proposed underwriting agreement with a group of underwriters headed by Union Securities Corporation and Harris, Hall & Company whereby said underwriters agree to purchase from the company for $26.25 a share, plus accrued dividends, such portion of the said 139,000 shares of series C preferred stock as may not be issued to holders of the presently outstanding preferred shares and the company agrees to pay to said underwriters, as compensation, an amount equal to 50 cents a share for the entire 139,000 shares of series C stock now to be offered, that is, a total compensation of $69,500. This amount the company proposes to charge to surplus. The stock would thus be issued on 4.25 per cent basis. On this point, applicant's president testified that after he had investigated comparable yields of preferred stocks of other companies and had discussed the matter with investment banking firms he concluded that the proposed dividend rate and terms incident to the issue and sale of the series C stock were reasonable and advantageous to the company.

Coming to the issue of the 29,142 shares of common stock, it appears that the company proposes to offer them to the holders of its presently outstanding common shares for purchase at $30 a share on the basis of one additional share for each four shares now held. No arrangements have been made for the sale of any part of said 29,142 shares not taken by the present common stockholders.

If all of the additional common shares are sold at the price indicated, the company will receive $874,260 which it desires to use to provide working capital, to pay expenses incident to the stock issue and to pay for additions and betterments made or to be made subsequent to July 31, 1945. A review of the record shows that applicant heretofore has expended well in excess of $874,260 for new property which has not been paid or provided for through the issue of stock, bonds, notes, or other evidences

of indebtedness. The company represents that prior to July 31, 1945, it expended for fixed capital $2,827,-724.49 in excess of proceeds from the sale of securities heretofore authorized by the Commission, which sum, clearly, in large part was obtained from surplus earnings or moneys represented by the reserve for depreciation. In addition, the applicant's president estimates that the company will be called upon to expend for new property approximately $560,000 during the last five months of 1945 and approximately $1,300,000 during 1946. In Exhibit C there is set forth, in some detail, a description of certain construction projects, aggregating $412,413.11, included in the estimate of $560,000.

The company's balance sheet sets forth current assets and prepaid expenses of $933,597.31 and current liabilities of $830,042.07. While there will be some adjustment in this relationship as a result of tax savings following the bond refinancing recently authorized by Decision No. 38157, it clearly appears that applicant is in need of additional funds to increase its cash position, to pay expenses incident to the stock issue, and to provide the cost of additional construction. The order herein, accordingly, will authorize the company to use approximately $412,413 of proceeds to finance construction expenditures incurred or to be incurred after July 31, 1945, and to use the remainder of such proceeds to reimburse its treasury and to provide additional working capital.

We wish to place applicant and its stockholders on notice that we are not by the order herein placing a value upon applicant's stock or properties, and that we will not regard the dividends paid on common stock as determining the rate of return which applicant should be allowed to earn in the event it becomes desirable or necessary to fix applicant's rates.

[2, 3] In recording the various stock transactions on its books, the company proposes to credit the premium to be received from the sale of common stock to "Paid-in Surplus" and to charge to that account the expenses, estimated at $8,000, applicable to the issue and sale of such stock. It proposes to charge to Earned Surplus the fee or compensation of $69,-500 to be paid the underwriters of its preferred stock and also the expenses of redeeming the presently outstanding preferred stock, of issuing and selling the new preferred stock of series C, estimated at $21,000, and of amending its Articles of Incorporation. It proposes to offset the cash redemption premium of $1.25 a share to be paid on the shares of series A and series B stock against the premium of $1.25 a share to be realized from the sale of the series C stock, with the result that such series C stock will stand on the books at its par value, with no additive amount for the premiums realized on its sale. For accounting simplification we will authorize the treatment proposed. However, in doing so, we do not admit that the series C stock in its entirety is being issued on a 4.4 per cent basis. If the occasion arises in the future we will take into consideration the premiums received by the company on the sale of such stock in determining the basis upon which such stock was issued.

ORDER

A public hearing having been held on this application by examiner Fankhauser and the Commission having considered the evidence submitted at such hearing and being of the opinion that the requests of applicant should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of its stock is reasonably required by applicant for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

It is hereby *ordered* as follows:

1. California Water Service Company may, on or before December 31, 1945, issue not exceeding 139,000 shares of its preferred stock of series C in exchange for all or any part of its presently outstanding shares of preferred stock of series A and series B, such exchange to be on a share for share basis.

2. California Water Service Company may, on or before December 31, 1945, issue and sell at not less than $26.25 a share, plus accrued dividends, such portion of said 139,000 shares of preferred stock of series C as may not be exchanged for shares of preferred stock of series A and series B and use the proceeds to pay the redemption price of said shares of preferred stock of series A and series B not surrendered for conversion into, or exchange for, shares of preferred stock of series C, such sale to be made in accordance with the terms outlined in Exhibit 3.

3. California Water Service Company may, on or before December 31, 1945, issue and sell at not less than par, not exceeding 29,142 shares of its common stock to the holders of its presently outstanding shares of common stock, but not otherwise, on the basis of one new share for each four shares now held, and use approximately $412,413 of the proceeds to finance construction expenditures made or to be made after July 31, 1945, and use the remaining proceeds to reimburse its treasury because of moneys actually expended from income, or from other moneys in its treasury not secured by or obtained from the issue of securities, for the construction, completion, extension, or improvement of its facilities prior to July 31, 1945.

4. California Water Service Company may account for stock redemption premiums, sales premiums, fees or compensation to underwriters and expenses in connection with the issue and redemption of its stock in the manner set forth in the opinion preceding this order.

5. California Water Service Company shall file with the Commission monthly reports as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

6. California Water Service Company shall file with the Railroad Commission within thirty days after it is effective, a copy of the registration statement including the exhibits referred to therein, filed with the Securities and Exchange Commission, covering the issue of $11,282,000 first mortgage 3¼ per cent bonds, series C, due November 1, 1975; 139,000 shares of cumulative preferred stock, series C, and 29,142 shares of common stock.

7. The authority herein granted is effective upon the date hereof.

CLARK, C., dissenting: I believe that all those affected by regulatory steps of this Commission have a right to expect fair and equal treatment. This includes the position of all security holders of any utility whether they be owners of its bonds, preferred or common stock, as well as the ratepayers of that utility. This also applies to all utilities one as compared with another, large or small. It is to me obvious that the holder of any class of security in a certain utility is affected by and has a direct interest in what is done in the way of that company marketing additional securities in any form.

This Commission has presently under submission in Case No. 4761 the subject of competitive bidding *vs.* negotiated sale of utility securities and therefore, as yet, excepting in individual cases as above referred to, this Commission has not adopted an overall policy in this respect. Consequently, I wish to make it plain that I am considering this case now before us individually and on its own merits.

The opinion and order herewith, as approved by the three Commissioners signing it, authorizes the California Water Service Company to sell at $25 per share 29,142 shares of its common stock to the holders of its presently outstanding stock. Today's market price on this stock is $38 per share bid, $39 per share asked.

Since I have been a member of this Commission it has, by formal orders, insisted that certain utilities sell new security issues on a competitive bid basis. Where and when I have approved such an order it has been with the sole thought that under such procedure the highest selling price practicably obtainable would be received by that utility at that time in exchange for such securities, and in each such instance I considered this procedure most fair in all respects to all parties affected.

But I certainly must say that I cannot reconcile the position the Commission took in those instances with the position now being taken by three of its members who, by their voting action in the accompanying opinion and order, authorizing the sale of as many as 29,142 shares of this company's common stock at a price which is $13 per share less than today's market bid price on presently outstanding common stock of the same par value of this same utility. Surely, the Commission by permitting this to be done is not equitably or properly guarding the interests of all parties directly affected, and further, in my opinion, it certainly lays itself open to justifiable charges of discrimination by reason of its treatment of the application of this utility as contrasted with what it has refused to do in response to the requests of certain other utilities in connection with their respective security issues.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Northern States Power Company

CA-2252
December 8, 1945

APPLICATION *for authority to extend rural electric lines; dismissed.*

Certificates of convenience and necessity, § 77 — Grounds for denial — Other service available — Electric extension.

Authority to extend rural electric lines to serve sixteen applicants for service should be denied upon a showing that twelve of the prospective customers have signed a petition stating that they desire service from an electric coöperative and requesting that the application of the company be denied, when with their withdrawal an extension to serve the remaining four customers would be an unwarranted investment for the probable returns and would constitute a burden on the rest of the company's system.

By the COMMISSION: Northern States Power Company, Eau Claire, on September 20, 1945, filed an application with the Commission for authority under § 196.49, Statutes, and General Order 2-U-20 to extend the company's rural electric distribution system approximately 5.25 miles to serve sixteen customers in sections 11, 12, 13, and 14, town of Albion, and sections 7 and 18, town of Unity, all in Trempealeau county.

Notice of investigation and hearing and assessment of costs was issued on October 11, 1945.

Hearing: October 17, 1945 at Eau Claire before Examiner Helmar A. Lewis.

APPEARANCES: Northern States Power Company by Bailey E. Ramsdell, attorney, Eau Claire; in opposition: Trempealeau Electric Cooperative by Floyd E. Wheeler, attorney and manager, Madison, Eugene Thornton, manager, Arcadia.

Letters in the form of briefs were filed with the Commission by Bailey E. Ramsdell, attorney for the Northern States Power Company, and by Floyd E. Wheeler, attorney for the Trempealeau Electric Cooperative.

Applicant, Northern States Power Company, requests authority to extend its rural electric lines in the towns of Albion and Unity, Trempealeau county. The proposed extension comprises approximately 5.2 miles and will serve sixteen customers in sections 11, 12, 13, and 14 in the town of Albion, and sections 7 and 18 in the town of Unity. Before the application was made to this Commission, the company obtained from each of the sixteen persons desiring service, an application for rural electric service signed personally or by their wives. These were all solicited by the company's representative. Some time after these applications were received and before the 19th day of September, 1945, the

date on which the applications were accepted by the company, eight of the signers visited the local office of the company and notified its representative that they were withdrawing their application. Twelve of the original applicants signed a petition which was filed with the Commission on October 6, 1945, stating that they desired service from the Trempealeau Electric Cooperative and requesting that the application of the company be denied. They are all members of the Trempealeau Electric Cooperative. Only four persons remain who have not indicated that they desire service from the coöperative. An extension to serve them would be an unwarranted investment for the probable returns and would constitute a burden on the rest of the company's system.

The testimony shows that both the Northern States Power Company and the Trempealeau Electric Cooperative have the materials and are in a position to build the extension under consideration.

It is not within the province of the Commission to require a group of farmers to accept service which they do not want. Whether the extensions requested are in the public interest and are required by public convenience and necessity, is the Commission's only concern. The testimony does not reveal that those criteria are present here. On the other hand, the testimony does reveal that at least twelve of the original applicants for service from the company are no longer interested in obtaining that service.

The Commission therefore finds:

1. That the Northern States Power Company proposes to extend its rural electric lines 5.2 miles to serve sixteen customers in sections 11, 12, 13, and 14, town of Albion, and in sections 7 and 18, town of Unity, Trempealeau county.

2. That at least twelve of the original applicants for service have now indicated that they are no longer interested in obtaining service from Northern States Power Company, but do desire service from the Trempealeau Electric Cooperative.

3. That not more than four of the original applicants for service are still desirous of obtaining service from Northern States Power Company.

4. That an extension of service by Northern States Power Company to serve not more than four customers would be an unwarranted investment for the probable returns and would constitute a burden on the rest of the company's system.

The Commission therefore concludes:

1. That the proposed extension by Northern States Power Company of 5.2 miles of rural electric line to serve sixteen customers in sections 11, 12, 13, and 14, town of Albion, and in sections 7 and 18, town of Unity, all in Trempealeau county, is not required by public convenience and necessity under § 196.49, Statutes, and General Order 2-U-20.

2. That the application should be denied.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Ojibwa Electric Company

2-U-2111
February 20, 1946

APPLICATION *by an electric company to sell its property to a coöperative and abandon operations as a public utility; denied.*

Service, § 221 — Abandonment — Consent.

1. Consumers who neither consent to nor oppose a proposed abandonment of utility service are presumed to desire that the present service be continued, p. 318.

Service, § 221 — Abandonment — Objection.

2. An application for permission to abandon utility service, as part of a plan to sell utility property to a coöperative, will be denied so long as there are customers objecting, where there is no showing that the public utility is operating at a loss or is or will be unable to continue to render reasonably adequate public utility service, p. 318.

By the COMMISSION: On December 11, 1945, the Ojibwa Electric Company, a public electric utility, operating in the village and town of Ojibwa, Sawyer county, filed an application with the Commission for authority to sell its property to the Jump River Electric Cooperative, Inc., for the sum of $12,500, subject to certain adjustments at the date of transfer as provided in the sale agreement and to abandon operations as a public electric utility. A notice of investigation and assessment of costs was issued on December 14, 1945. Notice of hearing was issued by the Commission on December 27, 1945.

APPEARANCES: Ojibwa Electric Company, by O. J. Falge, Attorney, Ladysmith, and Ben Faast, Eau Claire; Jump River Electric Cooperative, Inc., by Stafford and Stafford, Attorneys, Chippewa Falls, by John Ensley, Attorney, by Roy Wells, and William Howard, President, Ladysmith.

In opposition: Henry Granica, Ojibwa, Winter Light & Power Company, by Walter Jensen, Grantsburg, and Robert Craig, Radisson.

Opinion

The utility proposed to be sold is located in the town of Ojibwa, Sawyer county. Approximately fifty-three customers are served by the company. About ten persons attended the hearing. Testimony was given by seven witnesses and five exhibits were offered.

The evidence shows that of the fifty-three customers approximately one-half have indicated verbally to the president of the Ojibwa Company that

they have no objection to the abandonment of the service by the company. Eighteen have, by petition, expressed their opposition to abandonment; nine have not expressed themselves one way or another. Three of the eighteen petitioners who are opposed to abandonment attended the hearing and gave testimony in opposition to the application. The proposed purchaser is not a public utility subject to the jurisdiction of this Commission.

Section 196.81, Statutes, provides that

"No public utility . . . shall abandon or discontinue any line, branch line or extension or service thereon without first securing the approval of the Commission. In granting its approval, the Commission may impose such terms, conditions, or requirements as in its judgment are necessary to protect the public interest."

[1] In considering what is necessary to protect the public interest, the statutory obligation of a public utility should be noted. The public utility is required by § 196.43, Statutes, to render reasonably adequate service at reasonable rates. That duty has been undertaken by the applicant utility in the area under consideration. Under § 196.37(2), Statutes, the Commission has the duty to require a public utility to give service upon a finding that "service which can reasonably be demanded cannot be obtained." The evidence shows a specific demand for the continuance of the existing public utility service by some of the petitioners. As was stated in Re Wisconsin Pub. Service Corp. (Wis 1945) 2–U–2029, 59 PUR(NS) 238, 240, we must assume that "in the absence of an affirmative consent that the other patrons, who have neither consented to nor opposed the proposed abandonment, desire to have the present public utility service continued."

[2] It naturally follows that so long as there are customers objecting, or not consenting to the abandonment of public utility service by the company, the application should be denied, where there is no showing that the public utility is operating at a loss or is or will be unable to continue to render reasonably adequate public utility service.

With the denial of the application for authority to abandon public utility service, the application for approval of the sale of the company becomes moot, and such application will be dismissed.

Findings of Fact

The Commission finds:

1. That the evidence in this proceeding does not warrant the abandonment by the Ojibwa Electric Company of electric public utility service within the territory described in the application herein.

2. That the continuance of such service by the applicant is required by the public interest.

Conclusions of Law

The Commission therefore concludes:

1. That the application of Ojibwa Electric Company for authority to abandon electric public utility service in the town of Ojibwa, Sawyer county, should be denied.

2. That the application of the said

company for approval of the sale of its electric-distribution lines in the said town should be dismissed.

ORDER

It is therefore *ordered:*

That the applications of Ojibwa Electric Company for authority to abandon electric public utility service in the town of Ojibwa, Sawyer county, be and is hereby denied, and for approval of the sale of its electric-distribution lines in the said town be and is hereby dismissed.

WASHINGTON DEPARTMENT OF TRANSPORTATION

Re A. M. Gage

Hearing No. 3712, Order M. V. No. 43915
February 11, 1946

APPLICATION *by private carrier for permission to operate as a common carrier; denied.*

Monopoly and competition, § 66 — Private carriers — Return trips — Public interest.

A private motor carrier should not be permitted to operate as a common carrier on return trips since such a mixture of operations, in competition with common carriers, is inconsistent with the public interest.

By the DEPARTMENT: This matter came on regularly for hearing at Yakima, Washington, on the 14th day of December, 1945, pursuant to notice duly given, before Wallace G. Mills, examiner; Evelyn Howard, reporter.

The parties were represented as follows: A. M. Gage, by Lawrence F. Cleman, Attorney, Ellensburg, for applicant; Lee & Eastes, by Thomas A. Williams, Attorney, Seattle, for protestant.

History of Proceeding

A. M. Gage of Ellensburg, Washington, applicant herein, filed his application for extension under the provisions of Chap 184 of the Laws of 1935, as amended, and the rules and regulations of the Department governing motor freight carriers, to authorize him to transport his own farm equipment and to operate as a cash buyer of farm commodities in Kittitas county and to points in western Washington. This application is, therefore, an application for waiver of the provisions of Rule 16 of the rules and regulations governing motor freight carriers.

This application was protested by Lee & Eastes, holder of a common carrier permit, and was thereupon set for hearing at Yakima, Washington, on the 14th day of December, 1945. The hearing came on as scheduled. Applicant testified in his own behalf

and one witness testified on behalf of protestant. No exhibits were introduced. The Department being fully advised in the premises makes and enters the following findings of fact and order:

Findings of Fact

Applicant desires to buy hay, grain, and straw in the vicinity of Ellensburg and sell it in western Washington. His operation would be to operate as a private carrier westbound and to operate as a common carrier in the hauling of feed eastbound. He would also haul lumber, shingles, and lath eastbound as a common carrier.

Section 22 of Chap 184 of the Laws of 1935, as amended, provides that it shall be unlawful for any person to operate any vehicle at the same time in more than one class of operation, except upon approval by the Department and a finding that such operation will be in the public interest.

Rule 16 of the rules and regulations governing motor freight carriers provides:

"No common or contract carrier shall operate any vehicle as a private carrier in transporting property owned or being bought or sold by him or it, while said vehicle is registered under his or its permit, except after approval by the Department and a finding that such operation will be in the public interest."

The proposed operations of applicant are in express violation of the cited law and the rule hereinabove quoted. The Department finds that the proposed service would not be in the interest of the shipping public for the reason that if he is permitted to so engage in both common and private carriage it is clear that the results might affect the maintenance of adequate and efficient service by purely common carriers upon whom the general public must depend. A private carrier has the advantage of an assured traffic obtained without solicitation and expense. A disadvantage which he often suffers is lack of a well-balanced traffic in both directions. If the private carrier is able to overcome this disadvantage by operating as a common carrier in one direction, it is evident that advantages which he enjoys in his private carriage will enable him to compete on better than even terms with most common carriers. The effect is to deprive common carriers of revenue they need to sustain their service to the public. Inasmuch as the general public must depend upon common carriers, a mixture of operations is inconsistent with the public interest.

ORDER

Wherefore, it is *ordered* that application (E–5629) of A. M. Gage for extension under Common Carrier Permit No. 978 be, and it hereby is, denied.

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature, new construction, and changes in personnel.

General Electric Reorganizes Transformer Division

A REORGANIZATION of the General Electric Company's transformer division has been announced by W. V. O'Brien, manager of the central station divisions. The transformer division has been divided into two divisions, as follows:

The transformer division, with responsibility for power and distribution transformers, feeder voltage regulators, lightning arresters, fuse cutouts, and capacitors. Harry F. McRell has been appointed division manager.

The specialty transformer division, with responsibility for fluorescent lamp ballasts, specialty transformers, and products now the responsibility of the specialty transformer section. Paul M. Staehle has been appointed division manager.

L. R. Brown, for twenty-three years manager of the transformer division in Pittsfield, Massachusetts, has been advanced to Mr. O'Brien's staff, where his assignment will be manager of transformer divisions.

Westinghouse Graduate Fellowship Reëstablished

DR. LOUIS T. RADER, chairman of Illinois Institute of Technology's department of electrical engineering, has announced that the graduate fellowship in power systems engineering, which the Westinghouse Educational Foundation first established at Illinois Tech in 1945, has been reëstablished on a yearly basis for a period of five years. Applications for this year's fellowship are being accepted by Dr. Rader, and must be received by him before June 1, 1946. The final decision will be announced to all applicants by June 16th. The appointment will become effective September 23rd.

One fellow will be selected each year by a joint committee representing both the Foundation and the Institute. Leading to a degree of Master of Science in Electrical Engineering, this fellowship provides a stipend of $1,500 with all tuition fees paid for twelve months. In the event that the candidates are entitled to receive benefits under the G. I. Bill of Rights, the committee reserves the right to divide the fellowship, awarding one-half to each of two candidates. The compensation in this event would be $87.50 per month rather than $125 and the government would pay the tuition fees.

The successful candidate, who must hold a Bachelor's degree in Electrical Engineering, will be chosen not only for his scholastic ability, but also for his personal qualifications and interests. He will devote full time to the program's study of the technical problems of power generation, transmissions, and distribution. With no academic duties to perform the successful candidate will be given time to gain experience in the operation of IIT's $90,000 A-C Network Calculator. He will have a voice in deciding upon the research program he is to complete.

Solar Electric Appoints New General Sales Manager

B. H. TAYLOR, president of Solar Electric Corporation of Warren, Pennsylvania, manufacturers of incandescent lamps, as well as other electrical products, announces the appointment of Nicholsa L. Neuman as general sales manager.

Mr. Neuman will be in charge of all sales, sales promotion, publicity, and merchandising activities of the Solar Electric Corporation. Sales offices have been established at 110 William street, New York City, and all sales and sales promotion activities will be handled from this office.

Mr. Taylor also announced an ambitious expansion program for the next two to three years.

Chevrolet Establishes Fleet Department

A NEW national fleet department, which in number of personnel and scope of service is claimed to be the largest and most comprehensive in the history of the organization, has been established by the Chevrolet Motor Division of General Motors Corporation, General Sales Manager T. H. Keating announced recently.

Ray C. Meddaugh, formerly Chevrolet assistant regional manager at Chicago, has been appointed manager of the department. J. W. Thayer and York R. F. Giddey have been named assistant managers for sales, and H. M. Page assistant manager in charge of service, engineering, and training.

Mr. Keating predicted an expansion of more

(*Continued on page 26*)

(*Continued from page 25*)

than 100 per cent in some divisions of the postwar fleet market and said the new fleet department will provide a greatly expanded and improved service to volume users of Chevrolet products. He also said the new fleet setup would not only be of great value to fleet operators, but would also benefit the Chevrolet dealer and wholesale organization.

Among the services which the fleet service representatives will provide will be advice on fleet reconditioning, schools for garage foremen and superintendents, use of special equipment, cost and operation checks, analysis of automotive problems peculiar to the fleet operator, designing of new parts, and many other services to improve operating costs and increase efficiency.

Bishop Named Director of Sales For Sylvania Electric

ROBERT H. BISHOP has been named director of sales for all divisions and subsidiaries of Sylvania Electric Products Inc., according to an announcement by Don G. Mitchell, executive vice president.

Mr. Bishop, who joined Sylvania Electric in 1936, will be responsible for the coördination of selling policy in all divisions of the company as well as its subsidiaries, Colonial Radio Corporation and Wabash Corporation. He will also have direct line responsibility for the sales organization of the lamp, fixture, radio tube, and electronics divisions.

Stanley Works Acquires North Bros. Mfg. Co.

R. E. PRITCHARD, president of The Stanley Works, announced recently that transactions had been completed whereby Stanley will acquire the business and plant of the North Brothers Mfg. Company of Philadelphia, Pennsylvania, manufacturers of the well known line of Yankee Tools.

The North Brothers Mfg. Company will continue to operate in Philadelphia with the same equipment and personnel. Management will be under the direction of M. A. Coe, general manager of Stanley Tools. Messrs. Weierstall and Fegley, North Brothers officials, will continue their association as vice presidents.

Silastic Coated Fibreglas Tape

THE CONNECTICUT HARD RUBBER COMPANY, New Haven, according to information revealed by John Moffitt, president, brings to the electrical industry a remarkable new kind of tape made by coating Fibreglas with Silastic, the Dow-Corning Silicone Rubber.

The new tape is claimed to have wide application in the electrical field because of its high dielectric properties—1,100 volts per mil—and extraordinary capacity to retain this strength at temperatures up to 500° F. and not breakdown and carbonize.

The new product is marketed under the trade name Cohrlastic and distribution is now under way through electrical manufacturers, wholesalers, contractors, and dealers. It is available in rolls of various lengths, widths, and thicknesses. At present the demand is for .010 and .015 thicknesses, and is used as an insulating wrap for underground cables particularly at "hot spots."

Diebold Visible Binder Deliveries Normal

DIEBOLD announces that deliveries of Flex-Site visible binders have caught up with back orders and will now be maintained on schedule.

Included in an extensive line of Flex-Site binder accessories is a new type of rack to be known as Multi-Flex. This new rack is an exclusive feature in the Diebold line of binder equipment. Record sheets may be added, removed, or position changed, without removing the binder from the rack. Standard Multi-Flex rack holds six binders with a possible capacity of 10,000 or more records. Any one or several binders may be easily removed from the rack for distribution of work at peak load intervals.

New literature and catalogs are available on request.

Homelite Offers New Generator Bulletin

THE completely new line of portable gasoline-engine-driven generators now being produced by the Homelite Corporation, Port Chester, New York, is described in their bulletin L-406. It pictorially describes the standard line of generators which Homelite has developed—all of which are new models. Improved designs and the use of new materials in their construction have made possible a wider capacity range while retaining portability.

On-the-job photographs illustrate the advantages of a portable power plant—one which is always ready to furnish power under all conditions and at any location.

Generator sizes range from 500 watt to 5,000 watt, ac or dc, 6 to 230 volt, 50 to 800 cycle. The weights of the complete units vary from 48 pounds for the smallest size to 142 pounds for the 5,000 watt generator. Demonstrations of these new generators are offered without obligation.

A-C Appointment

HAROLD P. RICHMOND, former general superintendent of operations for the Jersey Central Power & Light Company, Asbury Park, New Jersey, has joined the New York office of the Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, as central station representative specializing in all steam and gas turbine matters.

Mr. Richmond became associated with the utility operating field in the summer of 1928 when between his junior and senior years at Worcester Polytechnic Institute he was employed by the United Electric Light & Power

(*Continued on page 28*)

(*Continued from page 26*)

Company, New York city, now the Consolidated Edison Company of New York, Inc.

Mr. Richmond has had a wide experience in all phases of power plant transmission and distribution line operations, as well as manufactured gas operations.

"Weston Engineering Notes"

A NEW publication entitled "Weston Engineering Notes," which will serve as a medium to provide pertinent application engineering information for users of electrical indicating instruments, has been inaugurated by the Engineering Laboratories of the Weston Electrical Instrument Corporation.

The first issue, dated February, 1946, featured articles entitled "The Galvanometer and the Bridge," and "Copper Oxide Rectifiers as Used in Measuring Instruments."

It is expected this new publication, being distributed free to a large mailing list, will make its appearance on a bi-monthly basis.

Anyone whose interests include instrumentation problems will be placed on the mailing list to regularly receive "Weston Engineering Notes" if a request is sent to John Parker, editor, Weston Electrical Instrument Corporation, Newark 5, New Jersey.

Stacey Issues Bulletin On Dry Seal Gas Holder

STACEY BROTHERS GAS CONSTRUCTION COMPANY, Cincinnati 16, Ohio, one of the Dresser Industries, has published a new 30-page bulletin (D-46) available upon request, covering detail and engineering data on their Stacey-Klonne Dry Seal gas holders.

This bulletin shows numerous construction pictures including cross sections through the gas holder, together with general dimensions and foundation data.

A-C Bulletin

ACCORDING to a bulletin just released by the Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, complete protection for men, motors, and equipment is afforded through the use of its type H line of motor starters.

The type H starter provides short circuit protection with high capacity disconnecting-type power fuses, heavy duty, oil-immersed contactors, accurate motor overload protection, safety door interlock, segregated high voltage compartment, and factory-assembled enclosures.

Bulletin 14B6410 is available on request from Allis-Chalmers 645, Milwaukee 1, Wisconsin.

Catalog Describes Filters

BLACKBURN-SMITH MFG. COMPANY, INC., Hoboken, New Jersey, has issued a new catalog which illustrates The Refiner, a pressure leaf type filter for clarifying and polishing, and the company's well-known line of cartridge type filters for industrial, marine, and general service.

(*Continued on page 30*)

New Utility Construction

C. & P. Five-year Expansion To Cost $46,000,000

THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY has announced plans for a vast peacetime expansion program which will cost $46,000,000 during the next five years.

The major portion of the company's construction program involves the expenditure of $5,000,000 this year for the installation of equipment on customers' premises. Expenditures for these purposes will total approximately $27,000,000 by the end of 1950, it was said.

Installation of central office equipment, a shortage of which exists, will cost $1,750,000 this year and nearly $6,000,000 within the next five years. Mr. Morrison said these improvements were vitally needed to take care of the rapidly growing demands for service.

It was revealed that several special projects, including television, mobile radio-telephone, and direct operator toll dialing, were being carried on and figured prominently in the company's plans.

Citizens Gas & Coke to Expand Output 50 Percent

PLANS for construction of two new buildings and installation of new equipment at a total cost of $1,992,343 have been announced by Thomas L. Kemp, general manager of the Citizens Gas & Coke Utility.

The project will increase the daily production by 15,000,000 cubic feet. It includes two buildings to be constructed at the main plant, which will house a part of the installation of two additional water gas sets. These sets will include purification equipment and compression facilities which are needed for additional output.

The largest daily production of the utility last winter was 31,000,000 cubic feet. Mr. Kemp said there would be need for an even greater output next winter.

Puget Sound Power & Light Plans $4,500,000 Program

DECLARING that "only the surface has been scratched" when it comes to considering electricity's potential contribution to the welfare of mankind, Frank McLaughlin, president of the Puget Sound Power & Light Company recently told stockholders of plans for additional expenditures of $4,500,000 for construction this year.

Of this amount, $4,000,000 has been earmarked for serving new customers, improvements and additions to the company's transmission and distribution systems.

Although new electrical appliances and equipment were unavailable, Puget Sound Power & Light Company's home and farm

customers used 12.8 per cent more electricity in 1945 than in 1944, it was stated, and Mr. McLaughlin said surveys indicate the average annual use by domestic customers will be in excess of 4,000 kilowatt hours by 1950, an increase of nearly 50 per cent over 1945.

Southern Bell Tel. & Tel. Plans Expansion in New Orleans

TWENTY-SIX thousand new telephones will be placed into service in New Orleans during this year, according to an announcement by Harry B. Lackey, district manager of the Southern Bell Telephone and Telegraph Company.

The program, outlined on a month-by-month basis, and calling for extensive additions to many exchanges, will bring the total number of telephones in the city to 161,000, a record high.

Ohio Edison Proposes $12,000,000 Program

THE OHIO EDISON COMPANY, applied recently to the Securities and Exchange Commission for authority to sell at competitive bidding 204,153 authorized but unissued additional shares of its own common stock.

Of the proceeds, $1,633,224, an amount equal to the $8 par value of such shares, would be credited to common capital stock account, and the remainder to premium on common stock account. The company also stated that it contemplates property additions estimated to cost more than $12,000,000.

East Ohio Gas Plans to Spend $11,000,000 for Construction

EAST OHIO GAS COMPANY, a subsidiary of Consolidated Natural Gas Company, has filed a joint application with the Securities and Exchange Commission covering the proposed sale by East Ohio to its parent of 50,000 additional shares of its $100 par value common capital stock for $5,000,000 in cash.

Proceeds of the sale will be used by East Ohio to finance its public utility business in the state of Ohio. The company pointed out in its application for approval of the transaction that additional funds are required in its business because of the large capital expenditures made during the last five years, and in view of the $11,236,000 proposed to be spent for additions to its utility plant in 1946.

Arkansas Power & Light Co. Plans New Construction

THE Securities and Exchange Commission has approved a joint application filed by the Electric Power & Light Corporation, and its subsidiary, Arkansas Power & Light Company, in which Arkansas proposed to issue and sell, and Electric proposed to acquire, 290,000 additional shares of the common stock of Arkansas, at par, for $3,625,000 cash.

Arkansas will use the proceeds of the sale, together with other monies, for the acquisition and construction of new facilities and extension and improvement of its present facilities.

Lone Star Gas Proposes $8,000,000 Expansion

PRESIDENT D. A. HULCY of Lone Star Gas Company told stockholders of the corporation at the annual meeting recently that $8,250,000 in new lines and other installations was contemplated during 1946.

The extensions and developments depend upon availability of materials, Mr. Hulcy said.

Texas Electric Service Plans $8,000,000 Program

TEXAS ELECTRIC SERVICE COMPANY has announced an $8,000,000 program of power plant and power line construction to meet anticipated heavy demand for industrial and residence electricity. The two-year construction budget will provide employment for several hundred workers, according to J. B. Thomas, president and general manager.

The major project in the program will be installation of a 40,000-kilowatt turbine and generator at Handley, which will be one of the largest in use by any public utility in Texas.

Coupled with expansion of the Handley plant will be construction of 50 miles of 60,000 volt line completing an industrial power loop around Fort Worth.

A 66,000 volt line to serve Andrews and the Fullerton oil field, a similar line from Wink north to the Keystone oil field and 80 miles of 12,500 volt line to extend existing lines into West Texas oil fields are on the schedule.

Alabama Power Announces $8,000,000 Construction

THE Board of Directors of the Alabama Power Co. has approved construction expenditures of over $8,000,000 in 1946 to be used for improvements, replacements, and extensions, it was announced recently.

Of this amount over $4,000,000 will be for rural electric lines and associated facilities. Approximately 3,200 miles of new rural electric lines are expected to be built by the company this year.

The balance of the expenditures will be devoted to new generating equipment, substations, and transmission and distribution line improvements.

St. Joseph L. & P. Plans New Construction

THE Securities and Exchange Commission has exempted from § 6 (a) of the Holding Company Act the issue and sale by St. Joseph Light & Power Company of $3,750,000 principal amount of its first mortgage bonds.

The proceeds from the sale of these securities are to be used to redeem St. Joseph's presently outstanding first mortgage bonds and to provide funds for construction purposes.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY *(continued)*

Design
Construction

H. A. KULJIAN & COMPANY

Reports
Valuations

Engineers
Public Utilities and Industrials.

Los Angeles 13 PHILADELPHIA 2 *New York* 5

Engineers

WILLIAM S. LEFFLER

Economists

SPECIALIZING IN
COST ANALYSIS—Unit Cost Determinations
RATE RESEARCH — OPERATING REPORTS
on
ELECTRIC — WATER — GAS Utility Operations
Noroton, Connecticut

LOEB AND EAMES

Public Utility Engineers and Operators
Ice and Refrigeration
Valuations, investigation reports, design and supervision of construction
57 WILLIAM STREET NEW YORK

J. H. MANNING & COMPANY

120 Broadway, New York
ENGINEERS

Business Studies **Purchase—Sales** **Valuations**
New Projects **Management** **Reorganizations**
Consulting Engineering **Mergers**
Public Utility Affairs including Integration

PUBLIC UTILITY ENGINEERING & SERVICE CORPORATION

CONSULTING ENGINEERS
DESIGN OPERATIONS
STEAM — HYDRAULIC — GAS
231 S. LA SALLE ST., CHICAGO (4), ILL.

SANDERSON & PORTER

ENGINEERS AND CONSTRUCTORS
Design and Construction of Industrials
and Public Utilities.
Reports and Appraisals in Connection
With Management Problems, Financing, Reorganizaton.
Chicago **New York** **San Francisco**

Sargent & Lundy

ENGINEERS
Steam and Electric Plants
Utilities—Industrials
Studies—Reports—Design—Supervision
Chicago 3, Ill.

PROFESSIONAL DIRECTORY (concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

A

*Addressograph-Multigraph Corp. .....
Albright & Friel, Inc., Engineers 35
American Appraisal Company, The 33

B

*Babcock & Wilcox Company, The .....
Baldwin Locomotive Works, The 7
Barber Gas Burner Company, The 3
Barker & Wheeler, Engineers 35
Black & Veatch, Consulting Engineers 35
*Blaw-Knox Division of Blaw-Knox Company ....
*Burroughs Adding Machine Co. .....

C

Carpenter Manufacturing Company 25
Carter, Earl L., Consulting Engineer 35
Cleveland Trencher Co., The 29
Combustion Engineering Company, Inc. 16-17
*Consolidated Steel Corp., Ltd. .....
*Coxhead, Ralph C., Corporation .....
Crescent Insulated Wire & Cable Co., Inc. 13
*Cummins Business Machines Division of A. S. C. Corporation .....

D

Davey Compressor Company .....Inside Back Cover
*Davey Tree Expert Company, The .....
Day & Zimmermann, Inc., Engineers 33
Dodge Division of Chrysler Corp. 21

E

Egry Register Company, The 23
Electric Storage Battery Company, The 24
Electrical Testing Laboratories, Inc. 33
*Elliott Company .....

F

Ford, Bacon & Davis, Inc., Engineers 33
*Ford Motor Company .....

G

*Gar Wood Industries, Inc. .....
General Electric Company 27
General Motors Truck & Coach Division .....Outside Back Cover
Gilbert Associates, Inc., Engineers 33
*Gilbert Associates, Inc., Industrial Relations Department .....
Gilman, W. C., & Company, Engineers 35
Grinnell Company, Inc. .....Inside Front Cover

H

Harris, Frederic R., Inc., Engineers 33

I

International Harvester Company, Inc. 19

J

Jackson & Moreland, Engineers 35
Jansen, Bowen & Farrell, Engineers 35

K

Kinnear Manufacturing Company, The 15
Kuljian, H. A., & Company, Engineers 34

L

*Lavino, E. J., and Company .....
Leffler, William S., Engineers 34
Loeb and Eames, Engineers 34
Lucas & Luick, Engineers 35

M

*Main, Chas. T. Inc., Engineers .....
Manning, J. H., & Company, Engineers 34
*Marmon-Herrington Co., Inc. .....
McCormick & Baxter Creosoting Co. 34
Mercoid Corporation, The 28

N

National Association of Railroad and Utilities Commissioners 18
Newport News Shipbuilding & Dry Dock Co. .. 22
*Nunn Manufacturing Company .....

P

Penn-Union Electric Corp. 28
Public Utility Engineering & Service Corporation 34

R

Recording & Statistical Corp. 17
Regester, Robert T., Consulting Engineer 35
Remington Rand Inc. .....
Ridge Tool Company, The .....
*Ripley Company, The .....

S

Sanderson & Porter, Engineers 34
Sargent & Lundy, Engineers 34
Schulman, A. S., Electric Co., Contractors ... 35
Sloan, Cook & Lowe, Consulting Engineers 35
*Stone & Webster Engineering Corp. .....

T

Toeppen, Manfred K., Engineer 35

W

*Weisbach Engineering and Management Corporation .....
White, J. G., Engineering Corporation, The ... 31

Professional Directory 33-35

*Fortnightly advertisers not in this issue.

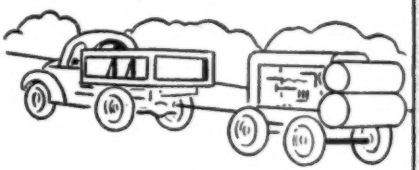
1946

WHERE QUICK REPAIRS ARE NECESSARY

DAVEY AUTO-AIR IS BEST!

SAVES • TIME • MONEY • MANPOWER

The conventional, trailer-mounted air compressor still has its place on construction jobs where air is needed in one place for a period of days or weeks. Here, the famous Davey *Air Aristocrat* does a job second to none.



MOST COMPRESSOR JOBS ARE SMALL

But most construction compressed air jobs are small — and can be done FASTER, MORE ECONOMICALLY, WITH LESS MANPOWER by taking advantage of the *MOBILITY* of the DAVEY AUTO-AIR COMPRESOR.

The Davey AUTO-AIR is mounted on the truck, and will go anywhere as fast as the truck can go. At the same time, because the AUTO-AIR occupies less than one-third of the body space, the same truck can carry the men, tools and materials to do the job.

Power for the compressor is taken direct from the truck engine through the Davey Power-Take-Off. Use of one engine reduces "first" cost, lowers operating and maintenance costs — provides more air-per-dollar-invested over a long period of years. This time-proved, heavy-duty compressor can be mounted on most trucks — whether new or already in use and can be readily changed from one truck to another.

Available in 60, 105, 160, 210 and 315 cfm capacities.

PUBLIC UTILITY COMPANIES ARE THE BIGGEST USERS OF DAVEY AUTO-AIR

D-145-2B

DAVEY *Compressor Co.*

KENT • OHIO

DEALERS IN PRINCIPAL CITIES

NEW GMCs for Public Utility Use

WAR-PROVED and IMPROVED FOR 194

New GMCs offer you the most in public utility truck value in a most complete selection of models. There are pick-ups in several sizes for light hauling and emergency work. There are conventional and cab-over-engine models in tonnage ranges and chassis options to accommodate every kind of special installation and repair equipment. And there are heavy duty gasoline and diesel powered chassis for pole hauling and setting, garbage disposal, fire equipment, all types of civic service and construction. It will pay you to investigate GMC. For, whatever you haul . . . from ½ to 20 tons . . . you'll find a war-proved, improved GMC truck ideally suited to the job.

THE TRUCK OF VALUE

GMC TRUCKS

GASOLI
DIESEL

GMC TRUCK & COACH DIVISION
GENERAL MOTORS CORPORATION